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No. 00-

IN THE

Supreme Court of the United States

EDGAR AROYO-GONZALEZ,
AMILCAR BELTETON-RIVERA,
EULOGIO GARZON-LARREATHEGUI, AND
VALENTIN VALDEZ-C,

Petitioners,

v.

COAHOMA CHEMICAL COMPANY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

SCOTT HENDLER
THE HENDLER LAW FIRM
816 Congress Avenue
Suite 1100
Austin, Texas 78701
(512) 473-3672
FAX (512) 480-2209

JONATHAN S. MASSEY
Counsel of Record
JONATHAN S. MASSEY, P.C.
3920 Northampton St., N.W.
Washington, D.C. 20015
(202) 686-0457
FAX (202) 686-0497

MICHAEL BRICKMAN
CHRISTIAN H. HARTLEY
NESS, MOTLEY, LOADHOLT,
RICHARDSON & POOLE
151 Meeting Street, Suite 600
Charleston, S.C. 29401
(843) 720-9164
FAX (843) 577-7513

Counsel for Petitioners

June 4, 2001

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

123 pp

QUESTION PRESENTED

Whether a *forum non conveniens* dismissal is permissible where uncontroverted expert testimony demonstrates that the filing of a lawsuit in the U.S. extinguishes the jurisdiction of the foreign forum, so that the foreign court is not available to entertain the action after a *forum non conveniens* dismissal.

LIST OF PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b) of the Rules of this Court, petitioners state that the parties to the proceeding in the court of appeals were:

Plaintiffs-Appellants/Cross-Appellees
Carlos Nicanor Espinola-E
Amilcar Belteton-Rivera (Petitioner in this Court)
Eulogio Garzon-Larreathegui (Petitioner in this Court)
Valentin Valdez-C (Petitioner in this Court)
Edgar Aroyo-Gonzalez (Petitioner in this Court)

Defendants-Appellees
Amvac Chemical Corporation
Shell Oil Company
The Dow Chemical Company
Occidental Chemical Corporation
Chiquita Brands, Inc.
Chiquita Brands International, Inc.
Del Monte Fresh Produce, N.A.

Defendants-Appellees/Cross-Appellants
Standard Fruit Company
Standard Fruit and Steamship Company
Dole Food Company, Inc.
Dole Fresh Fruit Company

Other Interested Entity
Riverside Chemical Company

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PETITION FOR A WRIT OF CERTIORARI

Edgar Aroyo-Gonzalez, Amilcar Belteton-Rivera, Eulogio Garzon-Larreathegui, and Valentin Valdez-C respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is unreported. The opinions of the district courts (Pet. App. 9a-109a) are also unreported.

JURISDICTION

The court of appeals entered its judgment on January 19, 2001. Timely petitions for rehearing were denied on March 6, 2001. Pet. App. 109a-14a. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

None.

STATEMENT

This case presents the question whether a dismissal under the doctrine of *forum non conveniens* is permissible where uncontroverted expert testimony demonstrates that the filing of a lawsuit in the U.S. has extinguished the jurisdiction of the foreign forum, so that the foreign court is not available to entertain the action after the dismissal of the U.S. proceeding. The Fifth Circuit held that a *forum non conveniens* dismissal is nonetheless possible in such circumstances. This holding conflicts with this Court's decision in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), and with holdings in numerous other circuits that have faithfully followed *Piper Aircraft*. The

Fifth Circuit has adopted a new rule of law that a case may be dismissed under *forum non conveniens* without the defendant's having to prove, as a threshold matter, that an adequate alternative forum is available. This Court's review is urgently needed.

This case involves a consolidated group of five individual lawsuits originally filed on May 10, 1996 in Mississippi state court. The plaintiffs, citizens of Ecuador, Panama, Guatemala, and Costa Rica, were injured while working on banana plantations in Latin America by the pesticide dibromochloropropane ("DBCP"), which has been banned in the U.S. for reasons of health and safety. Pet. App. 6a. Plaintiffs brought suit against DBCP manufacturers and distributors and banana producers. Plaintiffs did not plead any claims under federal law, but asserted only state-law claims of negligence, conspiracy, strict liability, intentional tort, and breach of implied warranty. *Id.*

The defendants removed the suits to the United States District Court for the Southern District of Mississippi, where they were assigned to three different judges. The defendants claimed both diversity jurisdiction and federal question jurisdiction, and moved to dismiss on grounds of *forum non conveniens*. Pet. App. 6a-7a. Plaintiffs denied the existence of federal subject-matter jurisdiction and opposed dismissal on the basis, *inter alia*, of uncontroverted expert testimony that the filing of lawsuits in the U.S. courts had extinguished the jurisdiction of Latin American forums, so that the foreign courts were not available to entertain the action after a *forum non conveniens* dismissal in the U.S. For example, the Guatemalan Attorney General informed the court that, "[o]nce the Plaintiffs exercised the right to bring suit in the domicile of the defendants," the ability to transfer the suit to Guatemala or re-file it there was lost, because "it is illegal for a Guatemalan judge to disturb this choice of

tribunal." EE-R 4089.[1] The Attorneys General of Costa Rica and Ecuador provided testimony to the same effect. EE-R 4088-91, 4398-99. Such declarations by foreign attorneys general on issues of foreign law are "conclusive." *United States v. Pink*, 315 U.S. 203, 220 (1942).

Similarly, the Permanent Commission for Agricultural Affairs and Natural Resources and the Special Commission of the Legislative Assembly of Costa Rica informed the court that, under Costa Rican law, "once the parties have exercised the right to file the proceedings in the locations of the defendants, . . . it is illegal for a Costa Rican judge to disturb this election of a forum." EE-R-4398.

Professor Alejandro Garro, adjunct professor of law at Columbia University and consultant for the American Bar Association, American Law Institute, and World Bank, provided numerous real-world examples – including three DBCP cases – where Central American courts have held that their jurisdiction has been extinguished by prior lawsuits filed in the U.S. and cannot be reactivated by *forum non conveniens* dismissals. EE-R 4821-24. Indeed, defendants themselves introduced evidence that 25 out of 30 shrimp farmer cases brought in Ecuador had been dismissed on the basis of lawsuits previously filed in the U.S. SER 1472. Professor Garro opined: "[i]n light of the decisions rendered by the courts of Panama and Costa Rica, it is my opinion that if a tort suit were to be brought by nationals or residents of those countries against a defendant domiciled in the United States, the courts of those countries will refuse to exercise jurisdiction over the same case if a court in the United States were to refer the parties to sue in Panama or Costa Rica." EE-R. 4822-23. "[R]ecent judicial decisions rendered in Costa Rica and Panama addressing the judicial parameters of their courts have the effect of making those courts unavailable for the purpose of a dismissal on grounds of forum non conveniens."

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[1] "EE-R___" refers to the record in the Court of Appeals.

EE-R. 4823. Professor Garro concluded: "Counsel for the plaintiffs requests my opinion as to whether the courts of the Latin American countries in question would be willing to assume jurisdiction over the case, despite the plaintiffs' choice to file suit with the court of the domicile of the defendants, on the ground that the Latin American court may find that its forum is 'more convenient' to the parties and to the interests of justice. The answer is no . . . ." EE-R-4036-37.

The record also demonstrated that any consent by the defendants was irrelevant, because the jurisdiction of the foreign courts cannot be enlarged by stipulation of the parties (just as federal subject-matter jurisdiction cannot be expanded by agreement of the parties). Professor Garro explained that "[a] stipulation by which the plaintiffs are compelled to bring suit in the Latin American forum does not qualify as a valid of jurisdiction." EE-R 4037. Professor Garro gave examples of Central American courts declining jurisdiction over U.S.-domiciled corporations on this basis. EE-R 4821-23.

The district courts below held that they possessed federal subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1332 and denied plaintiffs' motions to remand. Pet. App. 9a-109a. Despite the uncontroverted record, the courts dismissed the cases under the federal law of *forum non conveniens*. Pet. App. 12a-15a, 24a-27a, 38a-41a, 87a-90a, 96a-100a. Yet the district courts did not dispute the validity of the expert testimony adduced by plaintiffs that the filing of lawsuits in the U.S. extinguished the jurisdiction of Latin American forums. In fact, the district court in the Espinola-E case acknowledged that the plaintiff had "submitted the recent declaration of Professor Alejandro M. Garro in which the professor states that it is his interpretation of the laws of Ecuador that the courts of said country do not have subject matter jurisdiction over the plaintiff's case." Pet. App. 13a. The district court noted that the declaration "*was not responded to by the defendants*." Pet. App. 13a n.5 (emphasis added). The district court held that the declaration "does not preclude this Court from granting the defendants' motion to

dismiss on *forum non conveniens* grounds." *Id.* Yet this conclusory statement only underscored the fact that the district court was adopting a new rule of law: that a *forum non conveniens* dismissal is permissible despite uncontroverted proof of the unavailability of an adequate alternative forum. The district court's decision, in other words, only serves to highlight the need for this Court's review.

On appeal, the Fifth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. The Fifth Circuit held that the district courts erred in finding federal question jurisdiction. Pet. App. 7a. Nonetheless, in four of the five cases, the court of appeals held that diversity jurisdiction existed under 28 U.S.C. § 1332 and affirmed the district courts' dismissals on grounds of *forum non conveniens* for the reasons given by the district courts. Pet. App. 7a-8a.[2] Thus, the Fifth Circuit concluded that a *forum non conveniens* dismissal was appropriate notwithstanding the unavailability of an adequate alternate forum.

Petitioners sought rehearing, which was denied. Pet. App. 110a.

REASONS FOR GRANTING THE WRIT

In this case, the Fifth Circuit upheld *forum non conveniens* dismissals despite uncontroverted proof that the jurisdiction of the foreign courts has been extinguished by prior litigation in the U.S. The Fifth Circuit's decision amounts to a new rule of law that a defendant need not show, as a threshold matter, an adequate, or even available, alternative forum before a case may be dismissed. Indeed, the Fifth Circuit held that a *forum non*

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[2] In the Espinola-E case, the Fifth Circuit noted that the plaintiff had submitted a stipulation with his complaint attesting that the jurisdictional amount-in-controversy requirement could not be met because he could not recover damages in excess of $50,000. Pet. App. 7a-8a. The court of appeals remanded the Espinola-E case to the district court for a determination of whether the stipulation was binding. Pet. App. 8a.

conveniens dismissal is appropriate even when there is uncontroverted proof that an adequate alternative forum is *unavailable*.

The Fifth Circuit's holding conflicts with *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), and with holdings in numerous other circuits. This Court's review is urgently needed.

In *Piper Aircraft*, this Court instructed that "[a]t the outset of any *forum non conveniens* inquiry, the court must determine whether there exists an alternative forum." 454 U.S. at 254 n.22 "[W]here the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied. Thus, for example, dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute." *Id.* This Court cited an example, *Phoenix Canada Oil Co. Ltd. v. Texaco, Inc.*, 78 F.R.D. 445 (D. Del. 1978), and supplied a parenthetical: "court refuses to dismiss, where alternative forum is Ecuador, it is unclear whether Ecuadorean tribunal will hear the case * * *." 454 U.S. at 254 n.22.

The Fifth Circuit's holding flies in the face of this Court's decision in *Piper Aircraft*, which held that the availability of an adequate alternative forum was a necessary prerequisite for a *forum non conveniens* dismissal. Here, there is uncontroverted proof that Central American forums are not available to plaintiffs, yet the Fifth Circuit has nonetheless upheld a *forum non conveniens* dismissal.

Moreover, the Fifth Circuit's holding stands for the proposition that the defendant no longer bears the burden of demonstrating the availability and adequacy of an alternative forum. Other courts have properly held that the defendant shoulders such a burden. *See Reid-Walen v. Hansen*, 933 F.2d 1390, 1396-97 (8th Cir. 1990); *Lony v. E.I. Du Pont de Nemours & Co.*, 886 F.2d 628, 640 (3d Cir. 1989). If the defendants fail to meet their threshold burden of demonstrating the existence of an adequate alternative forum, the court has no discretion to

dismiss and must retain the action. *See El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 676-77 (D.C. Cir. 1996); *Ceramic Corp. of Am. v. Inka Maritime Corp.*, 1 F.3d 947, 949 (9th Cir. 1993).

The Fifth Circuit's decision violates this principle and conflicts with numerous decisions in other circuits. Every other circuit to have examined the issue has concluded that a *forum non conveniens* dismissal is unavailable, as a threshold matter, unless the defendant demonstrates the existence of an available and adequate alternative forum:

D.C. Circuit

El Fadl v. Central Bank of Jordan, 75 F.3d 668, 676-77 (D.C. Cir. 1996) (*forum non conveniens* dismissal impermissible because Jordan was inadequate forum for a suit against the Bank of Jordan, as it had enacted statutes immunizing the bank from liability, so that plaintiff had no remedy in Jordan);

Friends for All Children, Inc. v. Lockheed Aircraft Corp., 717 F.2d 602, 607 (D.C. Cir. 1983) ("Availability of adequate alternative forums is a threshold test * * * in the sense that a *forum non conveniens* motion cannot be granted unless the test is fulfilled").

First Circuit

Mercier v. Sheraton Int'l, Inc., 935 F.2d 419, 425-26 (1st Cir. 1991) (defendant's affidavit of professor of law and practicing attorney in Turkey was insufficient to establish that Turkey would be an adequate alternative forum, where affidavit failed to expressly state that Turkish law recognized claims for breach of contract and tortious interference with contract or some analogous action, but merely stated that "commercial claims" could be adjudicated in Turkey, affidavit failed to address statute of limitations issues, and affidavit announced its conclusions in summary fashion);

Tramp Oil and Marine, Ltd. v. M/V Mermaid I, 743 F.2d 48, 50 (1st Cir. 1984) (party moving for dismissal bears the burden of establishing that there is an adequate alternative forum);

Marriott v. Sedco Forex Int'l. Resources, Ltd., 827 F. Supp. 59, 69 (D. Mass. 1993) (Indian courts were not adequate forum because they did not have jurisdiction on the continental shelf and non-movant submitted an expert's affidavit to the effect that such jurisdiction could not be created "merely by consent").

Second Circuit

DiRienzo v. Philip Serv. Corp., 232 F.3d 49, 64-66 (2d Cir. 2000) (reversing, as an abuse of discretion, district court's dismissal of an action against a Canadian defendant by a class containing both U.S. and Canadian plaintiffs, based on a fraud that was executed largely in Canada, even though "an American court would likely apply Canadian law to claims by non-resident class members based on the purchase of securities outside the United States," "the bulk of the relevant documents do appear to be in Ontario," and "most of the potential witnesses with direct knowledge of the alleged fraud are also located in Ontario");

Wiwa v. Royal Dutch Shell Petroleum Co., 226 F.3d 88, 106, 107, 108 n.13 (2d Cir. 2000), *cert. denied*, 121 S. Ct. 1402 (2001) (reversing *forum non conveniens* dismissal of an action brought by Nigerian emigres against a Dutch corporation and a British corporation alleging that the plaintiffs and their next of kin had been imprisoned, tortured, and killed by the Nigerian government at the instigation of the defendants in reprisal for their political opposition to oil exploration activities in Nigeria, because district court had failed to consider, inter alia, "the very substantial expense and inconvenience (perhaps fatal to the suit) that would be imposed on the impecunious plaintiffs by dismissal in favor of a British forum"; "the additional cost and inconvenience to the defendants of litigating in New York is fully counterbalanced by the cost and inconvenience to the plaintiffs of requiring them to reinstitute the litigation in England – especially given the plaintiffs' minimal resources in comparison to the vast resources of the defendants"; "[t]he record * * * contains substantial evidence that trial in New York will be less expensive and burdensome for the plaintiffs. The

plaintiffs have already obtained excellent pro bono counsel to litigate this matter in the courts of the United States; there is no guarantee that they will be able to obtain equivalent representation in England without incurring substantial expenses");

Guidi v. Inter-Continental Hotels Corp., 224 F.3d 142, 147 (2d Cir. 2000) (reversing *forum non conveniens* dismissal of wrongful death and personal injury actions against U.S. hotel corporation because "justice is best served in this case by acknowledging the unique and heavy burden placed on Plaintiffs if they are required to litigate in Egypt");

Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co., 145 F.3d 481, 491 (2d Cir. 1998) (*forum non conveniens* dismissal "will be upset on appeal where a defendant has failed to demonstrate that 'an adequate alternative forum exists' and that 'the balance of convenience tilts strongly in favor of trial in the foreign forum'");

PT United Can Co. v. Crown Cork & Seal Co., 138 F.3d 65, 74 (2d Cir. 1998) (burden of proof is on defendant seeking dismissal);

Murray v. British Broad. Corp., 81 F.3d 287, 292 (2d Cir. 1996) (application of *forum non conveniens* doctrine "presupposes at least two forums in which the defendant is amenable to process");

Pittman v. Grayson, 869 F. Supp. 1065, 1075 (S.D.N.Y. 1994) (foreign forum inadequate where it would not recognize custody orders in action alleging custodial interference);

Hatzlach Supply Inc. v. Savannah Bank of Nigeria, 649 F. Supp. 688, 692 (S.D.N.Y. 1986) (Nigeria not adequate forum where strict foreign currency regulations would make it difficult for plaintiff to take any award out of Nigeria).

Third Circuit

Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220, 1225, 1227-29 (3d Cir. 1995) (India was an inadequate forum where evidence supported contention that Indian legal system would

take approximately 25 years to resolve case and the defendant did not substantiate its assertion that the case would receive expedited treatment: "a district court cannot dismiss on forum non conveniens grounds if that decision would render a plaintiff unable to pursue his or her action elsewhere");

Lony v. E.I. Du Pont de Nemours & Co., 935 F.2d 604, 609 (3d Cir. 1991) (holding that district court abused its discretion in dismissing suit because "the defendant bears the burden of persuasion on all elements of the *forum non conveniens* analysis");

Lacey v. Cessna Aircraft Co., 932 F.2d 170, 174 (3d Cir. 1991) ("the district court did not consider the impediments that Lacey might face in gaining access to sources of proof in British Columbia, impediments that potentially rob British Columbia of its practical value as a forum");

Lony v. E.I. Du Pont de Nemours & Co., 886 F.2d 628, 640 (3d Cir. 1989) (reversing dismissal: "in its discussion of the private interest factors, as in its discussion of the availability of an alternative forum, the district court consistently focused on whether or not [the plaintiff] would be unduly inconvenienced by its dismissing the case, rather than on whether Du Pont would be unduly burdened and oppressed by its retaining jurisdiction in the United States. In doing so, it appeared to shift the burden of persuasion from the defendant to the plaintiff," which "was inappropriate as a matter of law");

Lacey v. Cessna Aircraft Co., 862 F.2d 38, 43-44 (3d Cir. 1988) (reversing dismissal: "A defendant entertaining a *forum non conveniens* motion must first decide whether an adequate alternative forum exists to hear the case," and defendant failed to present evidence regarding alternative forum).

Eighth Circuit

Reid-Walen v. Hansen, 933 F.2d 1390, 1398, 1399 n.2 (8th Cir. 1991) ("courts must be sensitive to the practical problems likely to be encountered by plaintiffs in litigating their claim, especially when the alternative forum is in a foreign country";

"[w]hen * * * a foreign jurisdiction has imposed such severe monetary limitations on recovery as to eliminate the likelihood that the case will [ever] be tried, a court may justifiably take into account the realities of the foreign legal system.") (internal quotation marks omitted).

Ninth Circuit

Monegro v. Rosa, 211 F.3d 509, 514 (9th Cir. 2000), *cert. denied*, 121 S. Ct. 857 (2001) (reversing as an abuse of discretion a district court's dismissal of an action against an American defendant by 13 residents of the Dominican Republic: "[R]ather than treating *forum non conveniens* as an exceptional tool to be employed sparingly, the district court perceived it as a doctrine that compels plaintiffs to choose the optimal forum for their claim.");

Ceramic Corp. of Am. v. Inka Maritime Corp., 1 F.3d 947, 949-50 (9th Cir. 1993) (Japan not an adequate forum where the evidence showed that the Japanese court would likely dismiss the case due to the presence of a forum selection clause in the disputed contract).

Tenth Circuit

Rivendell Forest Prods., Ltd. v. Canadian Pac. Ltd., 2 F.3d 990, 993 (10th Cir. 1992) (reversing *forum non conveniens* dismissal: "The burden is on the moving party to establish the need for a *forum non conveniens* transfer, so we look to the evidence proffered by Defendants to support the trial court's conclusions. Unfortunately, Defendants provided no evidence on this issue whatsoever.").

The Fifth Circuit's holding conflicts with this Court's holding in *Piper Aircraft* and with all of these decisions in the courts of appeals that have faithfully followed *Piper Aircraft*.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

Scott Hendler
THE HENDLER LAW FIRM
816 Congress Avenue
Suite 1100
Austin, Texas 78701
(512) 473-3672
Fax (512) 480-2209

Jonathan S. Massey
Counsel of Record
JONATHAN S. MASSEY, P.C.
3920 Northampton St., N.W.
Washington, D.C. 20015
(202) 686-0457
Fax (202) 686-0497

Michael Brickman
Christian H. Hartley
NESS, MOTLEY, LOADHOLT,
RICHARDSON & POOLE
151 Meeting Street, Suite 600
Charleston, S.C. 29401
(843) 720-9164
Fax (843) 577-7513

Counsel for Petitioners

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60240

Filed January 19, 2001

CARLOS NICANOR ESPINOLA-E,

Plaintiff - Appellant-Cross-Appellee,

versus

COAHOMA CHEMICAL COMPANY, INC., Individually and as Successor in Interest to Coahoma Chemical Company, Inc.; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Company of Texas and Best Fertilizer Company; CHIQUITA BRANDS INTERNATIONAL, INC.; CHIQUITA BRANDS, INC.; DEL MONTE FRESH PRODUCE, N.A.,

Defendants-Appellees,

STANDARD FRUIT CO.; STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT CO., INC.,

Defendants - Appellees-Cross-Appellants.

****

No. 98-60454

AMILCAR BELTETON-RIVERA,

Plaintiff - Appellant-Cross-Appellee,

versus

COAHOMA CHEMICAL COMPANY, INC., Individually and as Successor-In-Interest to Coahoma Chemical Company, Inc.; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as Successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company; STANDARD FRUIT COMPANY; CHIQUITA BRANDS, INC.; DEL MONTE FRESH PRODUCE, N.A.

Defendants-Appellees,

STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT COMPANY, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.,

Defendants - Appellees-Cross-Appellants.

****

No. 98-60467

EULOGIO GARZON-LARRESTHEGUI,

Plaintiff - Appellant-Cross-Appellee,

versus

COAHOMA CHEMICAL COMPANY, INC., Individually and as Successor-In-Interest to Coahoma Chemical Company, Incorporated; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company; STANDARD FRUIT COMPANY; CHIQUITA BRANDS, INC.; DEL MONTE FRESH PRODUCE, North America,

Defendants-Appellees,

STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS INTERNATIONAL, INC.,

Defendants - Appellees-Cross-Appellants.

****
****

No. 98-60510

VALENTIN VALDEZ-C,

Plaintiff - Appellant-Cross-Appellee,

versus

COAHOMA CHEMICAL COMPANY, INC., Individually and as Successor-In-Interest to Coahoma Chemical Company, Inc.; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company; STANDARD FRUIT COMPANY; DEL MONTE FRESH PRODUCE, N.A.,

Defendants-Appellees,

STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT INTERNATIONAL; CHIQUITA BRANDS INTERNATIONAL, INC.,

Defendants - Appellees-Cross-Appellants.

****

No. 98-60646

EDGAR ARROYO-GONZALEZ; ET AL.,

Plaintiffs,

EDGAR ARROYO-GONZALEZ,

Plaintiff - Appellant-Cross-Appellee,

versus

COAHOMA CHEMICAL COMPANY, INC., Individually and as Successor-In-Interest to Coahoma Chemical Co., Inc.; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as successor to Occidental Chemical Co. and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Co.; STANDARD FRUIT CO.; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.,

Defendants-Appellees

STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY,

Defendants - Appellees-Cross-Appellants.

Appeals from the United States District Court for the
Southern District of Mississippi, Biloxi
USDC Nos. 1:96-CV-360-RG, 1:96-CV-359-GR,
1:96-CV-361-G-R, 1:96-CV-362-G-R,& 1:96-CV-358-BrR

Before JOLLY and DAVIS, Circuit Judges, and RESTANI, Judge.*

PER CURIAM:**

This appeal is the consolidation of five individual lawsuits arising from the use of the pesticide dibromochloropropane ("DBCP") on banana plantations in Latin America. The plaintiffs, citizens of Ecuador, Panama, Guatemala and Costa Rica, and former banana plantation employees, brought suit in Mississippi state court against a variety of companies allegedly related to the plaintiffs, exposure to DBCP, including former DBCP manufacturers and distributors, and banana producers. The plaintiffs filed claims for negligence, conspiracy, strict liability, intentional tort, and breach of implied warranty. The defendants removed the suits to federal court based on diversity jurisdiction and federal question jurisdiction, claiming the suits involved the federal common law of foreign relations. The district courts found jurisdiction on both grounds, and dismissed the claims on the grounds of forum non conveniens.

The plaintiffs now appeal the failure to remand, arguing that the district courts erred in finding subject matter jurisdiction for removal based on either diversity or federal question

*Judge, U.S. Court of International Trade, sitting by designation.

**Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

jurisdiction. They also appeal the dismissal of Chiquita Brands and Standard Fruit Company for lack of personal jurisdiction, and the dismissal of all other defendants based on forum non conveniens. Chiquita Brands International, Standard Fruit and Steamship Company, Dole Food Company, and Dole Fresh Fruit Company cross-appeal on the district courts' findings that they were subject to personal jurisdiction in Mississippi.

The district courts erred in finding federal question jurisdiction. Federal jurisdiction based on the common law of foreign relations is limited in scope; federal jurisdiction does not attach to every suit that involves foreign nationals. See, e.g., Marathon Oil Co. v. Rurgas, A.G., 115 F.3d 315, 320 (5th Cir. 1997) rev' d on other grounds, 526 U.S. 574 (1999) Aquafaith Shipping, Ltd. v. Jarillas, 963 F.2d 806, 808 (5th Cir. 1992). Although, as the defendants point out, the banana industry is an important segment of the economy in all of the countries at issue in these suits, these suits do not pose a threat to foreign sovereignty. None of the countries is a party to, or has protested, these particular lawsuits. Federal question jurisdiction does not exist here.

Although there is no federal question jurisdiction, this suit was properly removed to federal court based on diversity jurisdiction. Because the plaintiffs are all foreign nationals and the defendants are all citizens of a variety of different states, diversity jurisdiction would have existed if the suits had originally been filed in federal court. See 28 U.S.C. § 1332. Removal is therefore appropriate under 28 U.S.C. § 1441. Although defendants who are residents of the state where the action was filed cannot remove to federal court under § 1441 (b), we agree with the district court that the only Mississippi defendant, Coahoma Chemical Company, was improperly served and fraudulently joined.

Because a binding stipulation that a plaintiff will not accept damages in excess of the jurisdictional amount defeats diversity jurisdiction, however, we remand the Espinola-E suit, No. 98-6240, to the district court for a determination on whether the

stipulation that was filed with the complaint, claiming damages of no more than $50,000, is binding. If the district court finds that Espinola-E executed a binding stipulation, we direct the court to remand the case to the state courts. If the district court does not find a binding stipulation, we direct the court to dismiss the case on the grounds of forum non conveniens.

For the reasons given by the district court, we affirm the findings and holdings on personal jurisdiction and the dismissal of all claims for which there is jurisdiction on the grounds of forum non conveniens.

The judgment of the district court is AFFIRMED, except as to Espinola-E, whose case is REMANDED to the district court for further proceedings consistent with this opinion.

AFFIRMED and REMANDED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CARLOS NICANOR ESPINOLA-E.
PLAINTIFF

VERSUS CIVIL ACTION NO. 1:96cv36ORR

COAHOMA. CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC., DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

MEMORANDUM OPINION

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. ("Del Monte") to dismiss for

lack of personal jurisdiction [Docket Nos. 22-1, 131].[1] Also before the Court are the motions of the defendants, Chiquita Brands International, Inc. ("Chiquita International") [50-11, Chiquita Brands, Inc. ("Chiquita Brands") [51-11, Dole Food Company, Inc. ("Dole Food") (25-1), Dole Fresh Fruit Company ("Dole Fruit") (24-1], Standard Fruit and Steamship Company ("Standard Steamship") [26-1] and Standard Fruit Company ("Standard Fruit") (27-1, 133-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12 (b) (2) of the Federal Rules of Civil Procedure. The plaintiff has filed motions to remand [181, 119-1], and a motion to clarify (128-1] a ruling made May 20, 1997, regarding service of process on Coahoma Chemical, Inc. ("'Coahoma II") Defendants have filed a motion to reconsider [130-11 the same order. Finally, the defendants have filed a motion to dismiss for forum non conveniens and to enjoin future litigation (97-11 by this plaintiff. After due consideration of the briefs of counsel, the applicable law, and being otherwise fully advised in the premises, this Court finds as follows.

Statement of Facts

The plaintiff Espinola-E. is a citizen of Ecuador. (Compl.,¶ 1.) According to the allegation's of the complaint, he was exposed to the manufacturer defendants' dibromochloropropane [DBCP] products while working in banana fields in Ecuador between 1959-1990. (Id., ¶ 5.) Espinola-E. asserts that he was employed by one or more of the defendants named in the complaint. *(Id.,* pp. 5-6.)

The Court has considered the issues of law in the opinion filed in *Valdez-C v. Coahoma Chem., Inc.*, 1:96cv362GR, which includes, but not limited to, those issues regarding Federal

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[1]The subsequent numbers in brackets throughout this Memorandum Opinion will refer to the corresponding Civil Action Docket Number assigned by the United States Clerk.

Question or Diversity Jurisdiction and Remand.[2] All of those findings are adopted and incorporated by reference into this opinion. The motions to dismiss based on the doctrine of forum non conveniens will be separately addressed herein, as the applicable forum for Espinola-E. is different than the forum addressed in the aforementioned opinion.

The defendants Dole Food, Dole Fruit, Standard Fruit, Standard Steamship, Del Monte, Shell, Dow, Occidental, Chiquita International, and Chiquita Brands (collectively, "*defendants") c6ntend that the Court should dismiss this suit under the doctrine of forum non conveniens because all of the wrongful acts occurred outside the country. In addition, the defendants request that the Court enjoin the plaintiff from continuing to file, or from intervening in, any other T.Jawsuit in the United States related to exposure to DBCP.. (Defs.1 Forum *Non Conveniens* Mot., P. 1.) The doctrine of forum non *coveniens* involves the consideration of the private interest of the litigant together with the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

Defendants argue that the plaintiff is a citizen of Ecuador, that the exposure to DBCP happened in that country, and most witnesses and evidence is located there. (Defs.' Forum Non Conveniens Mot., Affidavit of R. Burton Ballanfant, p. 3-4; Exh. F, ¶¶ 6-7.) R. Burton Ballanfant, an attorney for Shell who has represented Shell in DBCP litigation involving foreign litigants

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[2]In said *Valdez-C* one of the findings is that there is federal jurisdiction in these cases. Thus, it is of no consequence that the damages claimed by the plaintiff in this cause do not exceed $50,000, including those for punitive damages, which would otherwise be required in a cause based only on diversity jurisdiction. (Complaint, ¶¶ 7; 40).

since 1983, states that documents concerning the plaintiff's employment history, information concerning use of the chemical on banana farms, and documents which relate to warnings and safety equipment, if any, provided to him are also located in Ecuador. (Id., ¶¶ 6-12.)

The plaintiff contends that dismissal under the doctrine of forum non *conveniens is* inappropriate for several reasons. First, plaintiff contends that a voluntary submission to the jurisdiction of his country would be ineffective. (Pl.'s Resp., p. 3.) The plaintiff asserts that it would be economically impossible for him to hire an attorney to represent him in his native country, that discovery would be curtailed, and that delays would be tremendous. (*Id.*, p. 4.)

A foreign plaintiff's choice of forum, like the one involved in this case, is not entitled to the same regard or presumption of correctness as would be applied where a plaintiff sues in his home forum. *Piper Aircraft v. Reyno,* 454 U.S. 235, 256 (1981); *Torres v. Southern Peru Copper Corp.,* 965 F. Supp. 899, 905 (S.D. Tex. 1996), *aff'd* 113 F.3d 540 (5th Cir. 1997). A court, in considering a motion to dismiss based on *forum non conveniens* should evaluate all relevant public and private interest factors which pertain to the convenience of the forums. *Piper*, 454 U.S. at 254. In weighing the factors, the court can consider any concessions made by the moving party, such as waiving statute of limitations, objections to process, personal jurisdiction or any other relevant factors. *Id.*, at 257, n.25.

The Court must first determine whether an alternative forum exists. *Baumgart v. Fairchild Aircraft Corp.,* 981 F.2d 824, 835 (5th Cir. 1993). An alternative forum will be available when the entire case and all parties can come within the jurisdiction of the other forum. *Syndicate 420 at Lloyd's of London v. Early Am. Ins. Co.,* 796 F.2d 821, 830 (5th Cir. 1986). The moving defendant must establish that an adequate and available forum exists for all defendants. *In re Air Crash Disaster Near New Orleans,* 821 F.2d 1147, 1164 (5th Cir. 1987), *vacated & remanded on other grounds sub nom. Pan Am.*

World Airways v. Lopez, 490 U.S. 1032 (1989).

In evaluating the private interests the court should consider the relative ease of access to sources of proof, the availability of compulsory process, the cost of obtaining attendance of willing witnesses, the enforceability of a judgment if one is obtained, and practical considerations concerning the administration of the trial. The plaintiff has presented an official opinion letter from the Attorney General of Ecuador in which the attorney general states that he believes that Ecuadorian citizen's are being discriminated against by United States courts, and that based on treaties between the two countries, this case should remain in this forum. (Ct. R., Doc. 124, Exh. 1.)[3] The plaintiff also has also submitted the recent declaration of Professor Alejandro M. Garro[4] in which the professor states that it is his interpretation of the laws in Ecuador that the courts of said country do not have subject matter jurisdiction over the plaintiff's case.[5]

The defendants have provided the affidavit of Ecuadorian law expert Dr. Enrique Ponce y Carbo which states that the legal system of Ecuador provides its citizens the right to pursue a cause of action against the manufacturer or supplier of defective products, an employee may pursue a claim against his employer for injuries sustained while employed, a negligence claim is recognized in the country, and has appellate, consolidation and discovery procedures. (Defendants' *Forum Non Conveniens* Mot., Exh. K.) The defendants also have responded to the

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[3]See Garzon-Larreateguiv. Coahoma Chemical Co., Inc., et al., Civil Action No. 1:96cv361GR, Memorandum *Opinion, filed* November 25, 1997, p.5, incorporated herein by reference.

[4]Professor Garro previously submitted a declaration in *Edgar Arroyo-Gonzalez, et al. v. Coahoma Co., Inc., et al.*, Civil Action No. 1:96cv358BR.

[5]This declaration was made of record by an Affidavit of Christian H. Hartley filed on March 11, 1998; however, the Court has reviewed the document (which was not responded to by the defendants) and finds that it does not preclude this Court from granting the defendants' motion to dismiss on *forum nonconveniens* grounds.

information provided by the plaintiff by noting the treaty addressed in the opinion letter is no longer in effect and would not be offended by a *forum non conveniens* dismissal. (Defs. Resp., p. 5.) The United States District Court for the Southern District of Texas has considered the same issue and found that Ecuador is an appropriate forum. *Delgado v. Shell Oil,* 890 F. Supp. 1324,1366 (S.D. Tex. 1995). The availability of the Ecuadorian forum to a plaintiff's case that has been dismissed under the doctrine of *forum non conveniens* has been considered by several courts and found to be a suitable forum. *Sequihua v. Texaco, Inc.,* 847 F. Supp. 61 (S. D. Tex. 1994) ; A*quinda v. Texaco, Inc.* 945 F. Supp. 625 (S.D. N.Y. 1966), *Recon. denied,* 175 F.R.D. 50, 1997 WL 462013 (S.D. N.Y. August 12, 1997); Ciba-*Geigy Ltd. v. Fish Peddler, Inc.,* 691 So.2d 1111 (Fla. App. 4 Dist. 1997).

Based on this information, the Court concludes that the plaintiff would not be treated unfairly or deprived of all remedies by a suit in Ecuador. *See Simcox v. McDermott Int'l,* Inc., 152 F.R.D. 689, 694 (S.D. Tex. 1994). The Court recognizes that the majority of the relevant proof is located in Ecuador, along with almost all of the witnesses, including diagnosing and treating physicians, employers and family members, not to mention the plaintiff himself. Most of these witnesses would not be subject to the compulsory process of this Court, yet would be subject to such in Ecuador. *(Id.,* Ballanfant Aff., ¶¶ 7-9.) Interpreters would likely prove indispensable in this case, if tried in this country. *(Id.,* ¶ 10.) Owners and operators of independent farms are not subject to this Court's jurisdiction and cannot be joined here. (*Id.* ¶ 8. This factor tips the scales toward dismissal. *Piper Aircraft,* 454 U.S. at 259. The private interest gravitates toward dismissal as the bulk of the evidence is out of the country and more readily accessible there. Baumgart, 981 F.2d at 837; *see Sibaja v. Dow Chem. Co.,* 757 F.2d 1215, 1217 (11th Cir. 1985). Mississippi has no significant interest in these cases, and the suits would impose a burden on the Court, the defendants and the public at large, due to the enormous amount of time that would be

required to culminate one of these cases. *See Delgado,* 890 F. Supp. at 1368 n.111; *Ciba-Geigy Ltd. v. Fish Peddler, Inc.,* 691 So.2d 1111 (Fla.App. 4 Dist. 1997).

As noted in Garzon-Larreathegui, *supra* (footnote 3), the persistence in the filing-of similar suits alarms the Court-. Federal Courts can enjoin plaintiffs, such as these, from "abuse" of the court system by enjoining the commencement of further suits in the United States. *Villar,* 990 F.2d at 1499, *cert. denied 114* S.Ct. 690 (1994). Therefore, the Court concludes that this suit should be dismissed under *forum non conveniens.* In addition, the Court will condition this dismissal on formal agreement by all defendants to submit to the jurisdiction of Ecuadorian courts and waive any applicable statute of limitations defenses. *Perez & Compania (Cataluna), S.A. v. WVMEXICO I,* 826 F.2d 1449, 1453 (5th Cir. 1987).

Conclusion

For the reasons set forth above, this Court finds that the motions of the defendants, Del Monte (22-1] and Chiquita Brands [51-1], to dismiss for lack of personal jurisdiction should be granted. Also, the Court finds the motions of the defendants, Chiquita International [50-1], Dole Food [25-1][25-2], Dole Fruit [24-1][24-2], Standard Steamship [26-1][26-2] and Standard Fruit [27-1](27-3)[133-1] to dismiss for lack of personal jurisdiction, should be denied.

The Court further finds that the defendant's motion to dismiss for *forum non conveniens* and to enjoin future litigation [97-1] should be granted. Plaintiff's motion to clarify [128-1] an order entered in this cause on/relative to May 20, 1997, should be granted. Defendant's motion to reconsider [130-1] the same order should be denied. Finally, the Court finds that plaintiff's motions to remand [18-1, 119-1] should be denied. A separate judgment in conformity with and incorporating by reference the foregoing Memorandum Opinion shall issue. Each party shall bear their respective costs.

SO ORDERED AND ADJUDGED this the 27th day of March, 1998.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CARLOS NICANOR ESPINOLA-E.
PLAINTIFF

VERSUS CIVIL ACTION NO. 1:96cv360RR

COAHOMA. CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP Company; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.
DEFENDANTS

FINAL JUDGMENT

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. ("Del Monte") to dismiss for lack of personal jurisdiction [22-1, 131-1]. Also before the Court are the motions of the defendants, Chiquita Brands International, Inc. ("Chiquita International") [50-1], Chiquita Brands, Inc. ("Chiquita Brands") [51-11, Dole Food Company, Inc. [Dole

Food] [25-1], Dole Fresh Fruit Company (Dole Fruit] [24-1], Standard Fruit and Steamship Company {Standard Steamship) [26-1] and Standard Fruit Company (Standard Fruit] [7-1, 133-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed a motion to remand [18-1, 119-1], and a motion to clarify [128-1] a ruling made and/or relevant to May 20, 1997, regarding service of process on Coahoma Chemical, Inc. [Coahoma II] . Defendants have filed a motion to reconsider [130-1] the same order. Finally, the defendants have filed a motion to dismiss for *forum non conveniens* and to enjoin future litigation [97-1] by this plaintiff. Pursuant to the Memorandum opinion entered in this cause, this date, incorporated herein by reference, **IT IS HEREBY,**

ORDERED AND ADJUDGED that the defendant Standard Fruit's [27-1, 133-1] motions to dismiss in this case be, and hereby are, granted. It is further,

ORDERED AND ADJUDGED that the motions of the defendants, Del Monte [22-1, 131-1] and Chiquita Brands [51-1], to dismiss for lack of personal jurisdiction be, and hereby are, granted. It is further,

ORDERED AND ADJUDGED that the motions of the defendants, Chiquita International [50-1], Dole Food [25-1], Dole Fruit [241][24-2], and Standard Steamship [26-1][26-2] to dismiss for lack of personal jurisdiction, be, and are hereby, denied. It is further,

ORDERED AND ADJUDGED that the defendants' motion to dismiss for *forum non conveniens* and to enjoin future litigation [97-1] be, and hereby is, granted. It is further,

ORDERED AND ADJUDGED that the plaintiff's motion to clarify [128-1] an order entered in this cause on and/or relevant to May 20, 1997, be, and hereby is, granted. It is further,

ORDERED AND ADJUDGED that the defendant's motion to reconsider [130-1] the same order be, and hereby is, denied. It is further,

ORDERED AND ADJUDGED that the plaintiff's motions

to remand [18-1, 119-1] be, and hereby are, denied.

ORDERED AND ADJUDGED that the defendants' Dole Fresh Fruit Co., *et al.*, motion to Consolidate Cases [33-1] be, and hereby is, denied and moot.

ORDERED AND ADJUDGED that the plaintiff's motion to Lift Stay [45-1] Order to Conduct Limited Discovery [78-1] be, and hereby is, denied and moot.

ORDERED AND ADJUDGED that the defendant Shell Oil Company's motion to Quash Notice of 30(b)(6) Deposition [89-1] be, and hereby is, granted.

ORDERED AND ADJUDGED that the defendant Shell Oil Company's motion for Protective Order [89-2] be, and hereby is, granted.

ORDERED AND ADJUDGED that the motion by William H. Gresham and William H. Gresham, Jr., to Quash Service of Process (134-1] be, and hereby is, granted.

ORDERED AND ADJUDGED that motions [20-1] [22-2] and [27-2], or any other motions that are not otherwise dismissed herein or otherwise moot, if any, be, and hereby are, denied as moot.

ORDERED AND ADJUDGED that each party shall bears their respective costs associated with the motions herein.

SO ORDERED AND ADJUDGED this the 27th day of March, 1998.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CARLOS NICANOR ESPINOLA-E.
PLAINTIFF

VERSUS CIVIL ACTION NO. 1:96cv360RR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA, CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.
DEFENDANTS

MEMORANDUM OPINION

It has been brought to the attention of the Court that in its Memorandum Opinion entered on March 30, 1998 [Docket No. 149], and dated March 27, 1998, a clerical error was made. In said opinion this Court adopted and incorporated by reference the

holdings in *Valdez-C v. Coahoma Chemical Co., Inc., et al.,*[1] which addressed, *inter alia,* the Motion to Dismiss of the Defendant Standard Fruit Company. Pursuant to the language in *Valdez-C,* it was the intention of this Court to *grant* the Motion of the defendant Standard Fruit Company [Docket No. 27-1] [27-3]. This Court will, therefore, correct said memorandum order entered on March 30, 1998 [Docket No. 1491, and dated March 27, 1998; the Final Judgment entered in this cause on March 30, 1998 [Docket No. 150], dated March 27, 1998, accurately reflected that the Motion of the defendant Standard Fruit Company to Dismiss should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the language on page 9 of this Court's Memorandum opinion entered in this cause on March 30, 1998 [Docket No. 149], and dated March 27, 1998, which states that the motion of the defendant ". . . Standard Fruit [27-1][27-3] ... to dismiss for lack of personal jurisdiction, should be denied", is hereby corrected to read that the motion of the defendant "... Standard Fruit [27-1][27-3] ... to dismiss for lack of personal jurisdiction, should be granted, and said Motion of the defendant Standard Fruit [27-1] [27-3] is hereby granted. The Final Judgment [Docket No. 150] previously entered in this cause on March 30, 1998, reflected the correct disposition.

SO ORDERED AND ADJUDGED this the 13th day of May, 1998.

UNITED STATES DISTRICT JUDGE

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[1] Civil Action No. 1:96cv362(GR), Southern District of Mississippi, Southern Division, November 10, 1997, at or about p. 40.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMILCAR BELTETON-RIVERA
PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv359GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

MEMORANDUM OPINION

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. [Del Monte] to dismiss for lack of personal jurisdiction [22-1]. Also before the Court are the motions of the defendants, Chiquita Brands International, Inc. [Chiquita International 50-1], Chiquita Brands, Inc. [Chiquita

Brands 51-1], Dole Food Company, Inc. [Dole Food 26-1], Dole Fresh Fruit Company [Dole Fruit 25-1], Standard Fruit and Steamship Company [Standard Steamship 24-1] and Standard Fruit Company [Standard Fruit 27-1, 128-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed motions to remand [18-1, 122-1], and a motion to clarify [133-1] a ruling made May 20, 1997, regarding service of process on Coahoma Chemical, Inc. [Coahoma II]. Defendants have filed a motion to reconsider [135-1] the same order. Finally, Del Monte has filed a motion to dismiss for forum *non conveniens* [98-1], and to enjoin future litigation by this plaintiff. After due consideration of the briefs of counsel, the applicable law, and being otherwise fully advised in the premises, this Court finds as follows.

Statement of Facts

Belteton-Rivera is a citizen of Guatemala. (Am. Compl., 11.) According to the allegations of the complaint, Belteton-Rivera was exposed to the manufacturer defendants' dibromochloropropane [DBCP] products while working in banana fields in Guatemala between , 1959-1990. (*Id.*, ¶ 5.) Belteton-Rivera asserts that he was employed by one or more of the defendants named in the complaint. (*Id.*, pp. 5-6.)

The Court has considered the issues of law in the opinion filed in *Valdez-C v. Coahoma Chem., Inc.*, 1:96cv362GR. All of those findings are adopted and incorporated by reference into this opinion. The motions to dismiss based on the doctrine of *forum non conveniens* will be separately addressed, as the applicable forum for Belteton-Rivera is different than the forum addressed in the aforementioned opinion.

The defendants Dole Food, Dole Fruit, Standard Fruit, Standard Steamship, Del ,Monte, Shell, Dow, Occidental, Chiquita International, and Chiquita Brands [collectively defendants] contend that the Court should dismiss this suit under the doctrine of *forum non conveniens* because all of the wrongful

acts occurred outside the country. In addition, the defendants request that the Court enjoin the plaintiff from continuing to file, or from intervening in, any other lawsuit in the United States related to exposure to DBCP. (Defs.' *Forum Non Conveniens* Mot., p. 1.) The doctrine of *forum non conveniens* involves the consideration of the private interest of the litigant together with the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

Defendants argue that the plaintiff is a citizen of Guatemala, that the exposure to DBCP happened in that country, and most witnesses and evidence is located there. (Defs.' *Forum Non Conveniens* Mot., p. *2;* Exh. F, ¶ ¶ 6-7.) R. Burton Ballanfant, an attorney for Shell who has represented Shell in DBCP litigation involving foreign litigants since 1983, states that documents concerning the plaintiff's employment history, information concerning use of the chemical on banana farms, and documents which relate to warnings and safety equipment, if any, provided to him are also located in Guatemala. (*Id.*, ¶ ¶ 6-12.)

The plaintiff contends that dismissal under the doctrine of *forum non conveniens* is inappropriate for several reasons. First, plaintiff contends that a voluntary submission to the jurisdiction of the country would be ineffective. (Pl.'s Resp., p. 3.) The plaintiff asserts that it would be economically impossible for him to hire an attorney to represent him in his native country, that discovery would be curtailed, and that delays. would be tremendous. (*Id.*, p. 4.)

A foreign plaintiff's choice of forum, like the one involved in this case, is not entitled to the same regard or presumption of correctness as would be applied where a plaintiff sues his home forum. *Piper Aircraft v. Reyno*, 454 U.S. 235, 256 (198 1); *Torres v. Southern Peru*

Copper Corp., 965 F. Supp. 899, 905 (S.D. Tex. 1996). A court, in considering a motion to dismiss based on *forum non conveniens* should evaluate all relevant public and private interest factors which pertain to the convenience of the forums. *Piper,* 454 U.S. at 254. In weighing the factors, the court can consider any concessions made by the moving party, such as waiving statute of limitations, objections to process, personal jurisdiction or any other relevant factors. *Id.* at 257 n.25.

The Court must first determine whether an alternative forum exists. *Baumgart v. Fairchild Aircraft Corp.,* 981 F.2d 824, 835 (5th Cir. 1993). An alternative forum will be available when the entire case and all parties can come within the jurisdiction of the other forum. *Syndicate 420 at Lloyd's of London v. Early Am. Ins. Co.,* 796 F.2d 821, 830 (5th Cir. 1986). The moving defendant must establish that an adequate and available forum exists br all defendants. *In re Air Crash Disaster Near New Orleans,* 821 F.2d 1147, 1164 (5th Cir. 1987), vacated & remanded on other grounds sub nom., Pan Am. World Airways v. Lopez, 490 U.S. 1032 (1989).

In evaluating the private interests the court should consider the relative ease of access to sources of proof, the availability of compulsory process, the cost of obtaining attendance of willing witnesses, the enforceability of a judgment if one is obtained, and practical considerations concerning the administration of the trial. The defendant has provided the affidavit of Guatemalan law expert Ricardo Sagastume Vidaurre which shows that Guatemala provides its citizens the right to pursue a cause of action against the manufacturer or supplier of defective products, an employee may pursue a claim against his employer for injuries sustained while employed, a negligence claim is recognized in the country, and has appellate,

consolidation and discovery procedures. (Def.'s *Forum Non Conveniens* Mot., Exh. K.) Plaintiff has presented an official opinion letter from the Attorney General of Guatemala regarding "the Guatemalan citizen's right to choose the domicile of the suit to be brought for damages." (Ct. R., Doc. 124, Exh. 2.) The opinion letter explains certain principals of Guatemalan law, Article 16 of the Code of Commercial and Civil Procedures states that all personal actions for recovery of damages must be brought before the judge of the place where the incident occurred. (*Id.*, p. 1.) Another provision of the same code, Article 17, states that the plaintiff may bring his suit before the judge of the defendant's domicile. (*Id.*) The Attorney General opines that there is no legal impediment to a Guatemalan bringing this type of suit in American, and that Guatemala does not recognize the theory of *forum non conveniens.* (*Id.*, p. 4.)

Defendants have countered this information by noting the opinion letter's date (May 3, 1995) and the fact that the same letter was considered by the United States District Court for the Southern District of Texas prior to issuing a finding that Guatemala is an appropriate forum for these types of cases. *Delgado v. Shell Oil,* 890 F. Supp. 1324,1361 (S.D. Tex. 1995). The availability of the Guatemalan forum to a plaintiffs case that has been dismissed under the doctrine of *forum non conveniens* was also considered by the United States District Court in Minnesota, and the court found Guatemala to be a suitable forum. *Polanco v. H.B. Fuller Co.*, 941 F. Supp. 1512, 1522-29 (D. Minn. 1996).

Based on this information, the Court concludes that the plaintiff would not be treated unfairly or deprived of all remedies by a suit in Guatemala. *See Simcox v. McDermott Intl, Inc.*, 152 F.R.D. 689, 694 (S.D. Tex. 1994). The Court recognizes that the majority of the

relevant proof is located in Guatemala, along with almost all of the witnesses, including diagnosing and treating physicians, employers and family members, not to mention the plaintiff himself. Most of these witnesses would not be subject to the compulsory process of this Court, yet would be subject to such in Guatemala. (*Id.*, Ballanfant Aff., ¶ ¶ 8-9.) Interpreters would likely prove indispensable in this case, if tried in this country. (*Id.*, ¶ 10.) Owners and operators of independent farms are not subject to this Court's jurisdiction and cannot be joined here. (*Id.*, ¶ 8.) This factor tips the scales toward dismissal. *Piper Aircraft*, 454 U.S. at 259. The private interest gravitates toward dismissal as the bulk of the evidence is out of the country ind more readily accessible there. *Baumgart,* 981 F.2d at 837; *see Sibaja v. Dow Chem. Co.,* 757 F.2d 1215, 1217 (11th Cir. 1985). Mississippi has no significant interest in these cases, ind the suits would impose a burden on this Court, the defendants and the public at large, due to the enormous amount of time that would be required to culminate one of these cases. *See Delgado,* 890 F. Supp. at 1368 n. 111; *Ciba-Geigy Ltd. v. Fish Peddler, Inc.,* 691 So.2d I I 11 (Fla. App. 4 Dist. 1997).

The persistence in the filing of similar suits alarms the Court. Federal Courts can enjoin plaintiffs, such as these, from "abuse" of the court system by enjoining the commencement of further suits in the United States. *Villar,* 990 F.2d at 1499, *cert. denied* 114 S.Ct. 690 (1994). Therefore, the Court concludes that this suit should be dismissed under *forum non conveniens.* In addition, the Court will condition this dismissal on formal agreement by all defendants to submit to the jurisdiction of Guatemalan courts and waive any applicable statute of limitations defenses. *Perez & Compania (Cataluna), S.A. v. M/V MEXICO I,* 826 F.2d 1449, 1453 (5th Cir. 1987).

Conclusion

For the reasons set forth above, this Court finds that the defendants Standard Steamship [24-1] and Standard Fruit's [27-1, 128-1] motions to dismiss in this case should be granted. The Court further finds that the motion of the defendants, Del Monte [22-1] and Chiquita. Brands [51-1], to dismiss for lack of personal jurisdiction should be granted. Also, the Court finds the motions of the defendants, Chiquita International [50-1], Dole Food [26-1], Dole Fruit [25-1], Standard Steamship [24-1] and Standard Fruit [27-1] to dismiss for lack of personal jurisdiction, should be denied.

Additionally, the Court finds that Del Monte's motion to dismiss for *forum non conveniens* [98-1] should be granted, and that Del Monte's motion to enjoin future litigation [98-2] should be granted. Plaintiffs motion to clarify [133-1] an order entered in this cause on May 20, 1997, should be granted. Defendant's motion to reconsider [135-1] the same order should be denied. Finally, the Court finds that the plaintiff s motions to remand [18-1, 122-1] should be denied. A separate judgment in conformity with and incorporating by reference the foregoing Memorandum Opinion shall issue. Each party shall bear their respective costs.

DATED, this the 24th day of November, A.D., 1997.

_____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMILCAR BELTETON-RIVERA
PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv359GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

FINAL JUDGMENT

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. [Del Monte] to dismiss for lack of personal jurisdiction [22-1]. Also before the Court are the motions of the defendants, Chiquita Brands International, Inc. [Chiquita International 50-1], Chiquita Brands, Inc. [Chiquita

Brands 51-1], Dole Food Company, Inc. [Dole Food 26-1], Dole Fresh Fruit Company [Dole Fruit 25-1], Standard Fruit and Steamship Company [Standard Steamship 24-1] and Standard Fruit Company [Standard Fruit 27-1, 128-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed motions to remand [18-1, 122-1], and a motion to clarify [133-1] a ruling made May 20, 1997, regarding service of process on Coahoma Chemical, Inc. [Coahoma II]. Defendants have filed a motion to reconsider [135-1] the same order. Finally, Del Monte has filed a motion to dismiss for *forum non conveniens* [98-1], and to enjoin future litigation by this plaintiff. Pursuant to the Memorandum Opinion entered in this cause, this date, incorporated herein by reference, it is hereby,

ORDERED AND ADJUDGED that the defendant Standard Fruit's [27-1, 128-1] motion to dismiss in this case be, and is hereby, granted. It is further,

ORDERED AND ADJUDGED that the motions of the defendants, Del Monte [22-1] and Chiquita Brands [51 - 1], to dismiss for lack of personal jurisdiction be, and hereby are, granted. It is further,

ORDERED AND ADJUDGED that the motions of the defendants, Chiquita International [50-1], Dole Food [26-1], Dole Fruit [25-1], and Standard Steamship [24-1] to dismiss for lack of personal jurisdiction be, and are hereby, denied. It is further,

ORDERED AND ADJUDGED that Del Monte's motion to dismiss for *forum non conveniens* [98-1] be, and is hereby, granted. It is further,

ORDERED AND ADJUDGED that Del Monte's motion to enjoin future litigation [98-1] be, and is hereby, granted. It is further,

ORDERED AND ADJUDGED that the plaintiff s motion to clarify [133-1] an order entered in this cause on May 20, 1997, be, and is hereby, granted.. It is further,

ORDERED AND ADJUDGED that defendant's motion to

reconsider [135-1] the same order be, and is hereby, denied. It is further,

ORDERED AND ADJUDGED that the plaintiffs motions to remand [18-1, 122-1] be, and are hereby, denied. Each party shall bear their respective costs associated with these motions.

SO ORDERED AND ADJUDGED, this the 24th day of November, A.D., 1997.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMILCAR BELTETON-RIVERA

PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv359GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Conpany of Texas and best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

ORDER

This cause is before the Court on motion of the plaintiffs to alter [155-1] or amend (155-2] the judgments in these cases, or in the alternative, to amend the findings of fact [155-3] under Rules 52 and 59(e) of the Federal Rules of Civil Procedure. The

Court has also become aware of the need to correct a clerical error within the Memorandum Opinions and Orders entered in these causes on November 25, 1997. Chief United States Magistrate Judge John M. Roper entered an order on October 20, 1996, directing that all matters in the related cases of *Eulogio* Garzon-Larreathegui v. Coahoma Chem. Co.,1:96cv361GR and *Valentin Valdez-C v. Coahoma Chem. Co.,* 1:96cv362GR be filed in the instant lawsuit. Accordingly, the ruling within this order shall also apply to the aforementioned cases.

"The Federal Rules do not recognize a 'motion for reconsideration' *in haec verba.*" *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990). Regardless, "[i]f the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is ,served after that time, it falls under Rule 60(b). " *Id.* Plaintiff's motion was filed within the time limits of Rule 59(e).

Plaintiff argues a variety of reasons why the rulings of this Court should be amended. The Court finds nothing new in the motion that was not considered by the Court in reaching its earlier decision.

Specific grounds for relief are not outlined under Rule 59(e), and a court has wide discretion in deciding whether to grant such a motion. *Edward H. Bohlin Co. v. Banning Co.,* 6 F.3d 350, 355 (5th Cir. 1993). Reconsideration of a prior judgment is a rare event. *Id.* Grounds for granting relief to a party seeking relief under Rule 59(e): (1) that the judgment is based upon a manifest error of law or fact; (2) the existence of newly discovered or previously unavailable evidence; (3) reconsideration is necessary to prevent manifest injustice; or (4) serious misconduct of counsel involved justifies relief. *Id.; see Waltman v. International Paper Co.,* 875 F.2d 468, 473 (5th Cir. 1989). None of these factors is involved in this case and no basis to alter the Court's previous ruling is present in plainitff s motion.

A motion filed under Rule 59 does not give an unhappy litigant an additional chance to sway the judge into ruling in

favor of the movant. See *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990); *Currie v. Baxter, Brown & Co.*, 145 F.R.D. 66, 68 (S.D. Miss. 1992); *FDIC v. Cage*, 810 F. Supp. 745, 747 (S.D. Miss. 1993); *see also Abbott v. Equity Group, Inc.*, 2 F.3d 613, 629 (5t.h Cir. 1993). For this reason alone, the Court finds that Belteton-Rivera's motions for reconsideration should be denied.

Plaintiff has requested amending the findings of fact under Rule 52 of the Federal Rules of Civil Procedure in this case, which does not apply to motions which were considered by the Court. FED..R.Civ.P. 52(a). Finally, the Court will correct the memorandum opinions entered on November 25, 1997, in Belteton-Rivera's case, cause number 1:96cv359GR; and Garzon-Larreathegui's case, cause number 1:96cv361GR as follows. The Court's summary of its conclusions found on page 7 of each opinion is amended to reflect that the motion of Standard Fruit to dismiss be granted. In addition, Belteton-Rivera's case, the memorandum opinion is amended to reflect that the Court did not intend to grant Standard Steamship's motion to dismiss. It is, therefore,

ORDERED AND ADJUDGED that Belteton-Rivera's motion to alter the judgement in this case [155-1] be, and is hereby, denied. It is further,

ORDERED AND ADJUDGED that Belteton-Rivera's motion to amend the judgment entered in s case [155-2] be, and is hereby, denied. It is further,

ORDERED AND ADJUDGED that Belteton-Rivera's motion to amend findings of fact under Rule 52 of the Federal Rules of Civil Procedure [155-3] be, and is hereby, denied. It is further,

ORDERED AND ADJUDGED that the Court's memorandum opinions filed on November 25, 1997, in the above styled and numbered causes, are hereby amended to reflect that the defendant Standard Fruit's motion to dismiss be granted. In addition, the memorandum opinion in Belteton-Rivera's case, 1:96cv359GR, is amended to reflect in all aspects that Standard

Steamship's motion to dismiss is denied. Tlie memorandum opinions will otherwise remain unchanged and in full force and effect in all respects. Each party is to bear their respective costs.

SO ORDERED AND ADJUDGED this the 29th day of June, A.D., 1998.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

EULOGIO GARZON-LARREATEGUI
PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv361GR i

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

MEMORANDUM OPINION

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. [Del Monte] to dismiss for lack of personal jurisdiction [22-1, 136-1]. Also before the Court are the motions of the defendants, Chiquita Brands International,

Inc. [Chiquita International] [51-1], Chiquita Brands, Inc. [Chiquita Brands] [50-1], Dole Food Company, Inc. [Dole Food] [27-1], Dole Fresh Fruit Company [Dole Fruit] [26-1], Standard Fruit and Steamship Company [Standard Steamship] [25-1] and Standard Fruit Company [Standard Fruit] [24-1, 137-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed motions to remand [18-1, 123-1], and a motion to clarify [133-1] a ruling made May 20, 1997, regarding service of process on Coahoma Chemical, Inc. [Coahoma. II]. Defendants have filed a motion to reconsider [135-1] the same order. Finally, the defendants has filed a motion to dismiss for *forum non conveniens*, [99-1], and to enjoin future litigation [99-2] by this plaintiff. After due consideration of the briefs of counsel, the applicable law, and being otherwise fully advised in the premises, this Court finds as follows.

Statement of Facts

Garzon-Larreathegui is a citizen of Ecuador. (Am. Compl., ¶ 1.) According to the illegations of the complaint, he was exposed to the manufacturer defendants' dibromochloropropane [DBCP] products while working in banana fields in Ecuador between 1959-1990. (*Id.*, ¶ 5.) Garzon-Larreategui asserts that he was employed by one or more of the defendants named in the complaint. (*Id.*, pp. 5-6.)-:.

The Court has considered the issues of law in the opinion filed in *Valdez-C v. Coahoma Chem., Inc.*, 1:96cv362GR. All of those findings are adopted and incorporated by reference into this opinion. The motions to dismiss based on the doctrine of *forum non conveniens* will be separately addressed, as the applicable forum for Garzori-Larreategui is different than the forum addressed in the aforementioned opinion.

The defendants Dole Food, Dole Fruit, Standard Fruit, Standard Steamship, Del Monte, Shell, Dow, Occidental, Chiquita International, and Chiquita Brands [collectively,

defendants] contend that the Court should dismiss this suit under the doctrine of *forum non conveniens* because all of the wrongful acts occurred outside the country. In addition, the defendants request that the Court enjoin the plaintiff from continuing to file, or from intervening in, any other lawsuit in the United States related to exposure to DBCP. (Defs.' *Forum Non Conveniens* Mot., p. 1.) The doctrine of *forum non coveniens* involves the consideration of the private interest of the litigant together with the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

Defendants argue that the plaintiff is a citizen of Ecuador, that the exposure to DBCP happened in that country, and most witnesses and evidence is located there. (Defs.' *Forum Non Conveniens* Mot., p. 7; Exh. F, ¶ ¶ 6-7.) R. Burton Ballanfant, an attorney for Shell who has represented Shell in DBCP litigation involving foreign litigants since 1983, states that documents concerning the plaintiff's employment history, information concerning use of the chemical on banana farms, and documents which relate to warnings and safety equipment, if any, provided to him are also located in Ecuador. (*Id.*, ¶ ¶ 6-12.)

The plaintiff contends that dismissal under the doctrine of *forum non conveniens* is inappropriate for several reasons. First, plaintiff contends that a voluntary submission to the jurisdiction of his country would be ineffective. (Pl.'s Resp., p. 3.) The plaintiff asserts that t would be economically impossible for him to hire an attorney to represent him in his native country, that discovery would be curtailed, and that delays would be tremendous. (*Id.*, p. 4.) A foreign plaintiff s choice of forum, like the one involved in this case, is not entitled o the same regard or presumption of correctness as would be applied where a plaintiff sues in his home forum. *Piper Aircraft v. Reyno*, 454 U.S. 235, 256 (1981); *Torres v. Southern Peru Copper Corp.*, 965 F. Supp.

899, 905 (S.D. Tex. 1996), *aff'd* 113 F.3d 540 (5th Cir. 1997). A court, in considering a motion to dismiss based on *forum non conveniens* should evaluate all relevant public and private interest factors which pertain to the convenience of the forums. *Piper,* 454 U.S. at 254. In weighing the factors, the court can consider any concessions made by the moving party, such as waiving statute of limitations, objections to process, personal jurisdiction or any other relevant factors. *Id.* at 257 n.25.

The Court must first determine whether an alternative forum exists. *Baumgart v. Fairchild Aircraft* Corp., 981 F.2d 824, 835 (5th Cir. 1993). An alternative forum will be available when the entire case and all parties can come within the jurisdiction of the other forum. *Syndicate 420 at Lloyd's of London v. Early Am. Ins. Co.,* 796 F.2d 821, 830 (5th Cir. 1986). The moving defendant must establish that an adequate and available forum exists for all defendants. *In re Air Crash Disaster Near New Orleans,* 821 F.2d 1147, 1164 (5th Cir. 1987), *vacated & remanded on other grounds sub nom., Pan Am. World Airways v. Lopez,* 490 U.S. 1032 (1989).

In evaluating the private interests the court should consider the relative ease of access to sources of proof, the availability of compulsory process, the cost of obtaining attendance of willing witnesses, the enforceability of a judgment if one is obtained, and practical considerations concerning the administration of the trial. Plaintiff has presented an official opinion letter from the Attorney General of Ecuador in which the attorney general stats that he believes that Ecuadorian citizen's are being discriminated against by United States courts, and that based on treaties between the two countries, this case should remain in this forum. (Ct. R., Doc. 124, Exh. 1.)

The defendant has provided the affidavit of Equadorian law expert Dr. Enrique Ponce y Carbo which states that the Equador legal system provides its citizens the right to pursue a cause of action against the manufacturer or supplier of defective products, an employee may)ursue a claim against his employer for injuries sustained while employed, a negligence claim is recognized in

the country, and has appellate, consolidation and discovery procedures. Def.'s *Forum Non Conveniens* Mot., Exh. K.) Defendants have responded to the information provided by the plaintiff by noting the treaty addressed in the opinion letter is no longer in effect and would not be offended by a *forum non conveniens* dismissal. (Defs.' Resp., p. 5.) rhe United States District Court for the Southern District of Texas has considered the same ssue and found that Equador is an appropriate forum. *Delgado v. Shell Oil,* 890 F. Supp. 1324,1366 (S.D. Tex. 1995). The availability of the Equadorian forum to a plaintiffs case that has been dismissed under the doctrine of *forum non conveniens* has been considered by several courts and found to be a suitable forum. *Sequihua v. Texaco, Inc.,* 847 F. Supp. 61 (S. D. Tex. 1994); *Aquinda v. Texaco, Inc.* 945 F. Supp. 625 (S.D. N.Y. 1966), recon. denied _____ F. Supp. ___, 1997 WL 462013 (S.D. N.Y. 1997); *Ciba-Geigy Ltd. v. Fish Peddler, Inc.,* 691 So. 2d 1111 (Fla. App. 4 Dist. 1997).

Based on this information, the Court concludes that the plaintiff would not be treated unfairly or deprived of all remedies by a suit in Ecuador. *See Simcox v. McDermott Int'l, Inc.,* 152 F.R.D. 689, 694 (S.D. Tex. 1994). The Court recognizes that the majority of the relevant proof is located in Equador, along with almost all of the witnesses, including diagnosing and treating physicians, employers and family members, not to mention the plaintiff himself. Most of these witnesses would not be subject to the compulsory process of this Court, yet would be subject to such in Equador. (*Id.*, Ballanfant Aff., ¶ ¶ 8-9.) Interpreters would likely prove indispensable in this case, if tried in this country. (*Id.*, ¶ 10.) Owners and operators of independent farms are not subject to this Court's jurisdiction and cannot be joined here. (*Id.*, ¶ 8.) This factor tips the scales toward dismissal. *Piper Aircraft,* 454 U.S. at 259. The private interest gravitates toward dismissal as the bulk of the evidence is out of the country and more readily accessible there. *Baumgart,* 981 F.2d at 837; *see Sibaja v. Dow Chem. Co.,* 757 F.2d 1215, 1217 (11th Cir. 1985). Mississippi has no significant interest in these cases, and

the suits would impose a burden on the Court, the defendants and the public at large, due to the enormous amount of time that would be required to culminate one of these cases. *See Delgado,* 890 F. Supp. at 1368 n. 111; *Ciba-Geigy Ltd. v. Fish Peddler, Inc.,* 691 So.2d 1111 (Fla. App. 4 Dist. 1997).

The persistence in the filing of similar suits alarms the Court. Federal Courts can enjoin plaintiffs, such as these, from "abuse" of the court system by enjoining the commencement of further suits in the United States. *Villar,* 990 F.2d at 1499, *cert. denied 114* S.Ct. 690 (1994). Therefore, the Court concludes that this suit should be dismissed under *forum non conveniens*. In addition, the Court will condition this dismissal on formal agreement by all defendants to submit to the jurisdiction of Equadorian courts and waive any applicable statute of limitations defenses. *Perez & Compania (Cataluna), S.A. v. M/V MEXICO I,* 826 F.2d 1449, 1453 (5th Cir. 1987).

Conclusion

For the reasons set forth above, this Court finds that the motions of the defendants, Del Monte [99-1] and Chiquita Brands [50-1], to dismiss for lack of personal jurisdiction should be granted. Also, the Court finds the motions of the defendants, Chiquita International [51-1],)ole Food [27-1], Dole Fruit [26-1], Standard Steamship [25-1] and Standard Fruit [24-1, 137-1] to dismiss for lack of personal jurisdiction, should be denied.

The Court further finds that the defendant's motion to dismiss for *forum non conveniens* [99-1] should be granted, and that the motion to enjoin future litigation [99-2] should be granted. Plaintiff's motion to clarify [133-1] an order entered in this cause on May 20, 1997, should be granted. Defendant's motion to reconsider [135-1] the same order should be denied. Finally, the Court finds that plaintiff's motions to remand [18-1, 123-1] should be denied. A separate judgment in conformity with and incorporating by reference the foregoing Memorandum Opinion shall issue. Each party shall bear their respective costs.

DATED, this the 24th day of November, A.D., 1997.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

EULOGIO GARZON-LARREATHEGUI
PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv361GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

FINAL JUDGMENT

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. [Del Monte] to dismiss for lack of personal jurisdiction [22-1, 136-11. Also before the Court are the motions of the defendants, Chiquita Brands International, Inc. [Chiquita International] [51-1], Chiquita Brands, Inc.

[Chiquita Brands] [50-1], Dole Food Company, Inc. [Dole Food] [27-1], Dole Fresh Fruit Company [Dole Fruit] [26-1], Standard Fruit and Steamship Company [Standard Steamship] [25-1] and Standard Fruit Company [Standard Fruit] [24-1, 137-1] to dismiss for lack of personal jurisdiction, purstiant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed a motion to remand [18-1, 123-1], and a motion to clarify [133-1] a ruling made May 20, 1997, regarding service of process on Coahoma Chemical, Inc. [Coahoma II]. Defendants have filed a motion to reconsider [135-1] the same order. Finally, the defendants has filed a motion to dismiss for *forum non conveniens* [99-1], and to enjoin future litigation by this plaintiff. Pursuant to the Memorandum Opinion entered in this cause, this date, incorporated herein by reference, it is hereby,

ORDERED AND ADJUDGED that the defendants Standard Fruit's [24-1, 137-1] notions to dismiss in this case be, and hereby are, granted. It is further,

ORDERED AND ADJUDGED that the motions of the defendants, Del Monte [22-1, 136-1] and Chiquita Brands [50-1], to dismiss for lack of personal jurisdiction be, and hereby are, granted. It is further,

ORDERED AND ADJUDGED that the motions of the defendants, Chiquita International [51-1], Dole Food [27-1], Dole Fruit [26-1] and Standard Steamship [25-1] to dismiss for lack of personal jurisdiction, be, and are hereby, denied. It is further,

ORDERED AND ADJUDGED that the defendant's motion to dismiss for *forum non conveniens* [99-1] be, and hereby is, granted. It is further,

ORDERED AND ADJUDGED that the motion to enjoin future litigation [99-2] be, and hereby is, granted. It is further,

ORDERED AND ADJUDGED that the plaintiff s motion to clarify [133-1] an order entered in this cause on May 20, 1997, be, and hereby is, granted. It is further,

ORDERED AND ADJUDGED that the defendant's motion to reconsider [135-1] the same order be, and hereby is, denied. It

is further,

ORDERED AND ADJUDGED that the plaintiff's motions to remand [18-1, 123-1] be, and hereby are, denied. Each party shall bears their respective costs associated with these motions.

SO ORDERED AND ADJUDGED this the 24th day of November, A.D., 1997.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT

VALENTIN VALDEZ-C.
PLAINTIFF

vs. CIVIL ACTION NO. 1:96cv362GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in interest to COAHOMA CHEMICAL COMPANY, INC.; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

ORDER

This cause is before the Court on motion of the plaintiff for reconsideration [100-1] of an order entered September 30, 1996, (Ct. R., Doc. 94), establishing a briefing schedule on the issues of *forum non conveniens* and the propriety of removal of this

cause. The plaintiff contends that the Court must address the jurisdictional issue before considering the issue of *forum non conveniens*. The plaintiff also requested additional time to brief the *forum non convemens* issue.

"The Federal Rules do not recognize a 'motion for reconsideration' *in haec verba*." *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990). Regardless, "[i]f the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is served after that time, it falls under Rule 60(b)." *Id.* Plaintiff's motion was filed within the time limits of Rule 59(e).

Rule 59(e) does not "give an unhappy litigant one additional chance to sway the judge." *Anders v. Minstar, Inc.*, No. 5:89cv98B, slip op. p. 5, (S.D.Miss. Oct. 19, 1990) (Barbour, J.) (quoting *Durkin v. Taylor*, 444 F.Supp. 879, 889 (E.D.Va. 1977). For this reason alone, defendant's motion should be denied. The Court finds that the order renders plaintiff's motion for reconsideration moot. Plaintiff was granted additional time to file a response to the briefs submitted by defendants, and this extension renders the motion for additional time moot. It is therefore,

ORDERED AND ADJUDGED that the plaintiffs motion for reconsideration [100-1] be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 13th day of November, A.D., 1996.

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UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

VALENTIN VALDEZ-C
PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv362GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

MEMORANDUM OPINION

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. [Del Monte] to dismiss for lack of personal jurisdiction [25-1, 144-1], or in the alternative for defective service of process. Also before the Court are the motions of the defendants, Chiquita Brands International, Inc.

[Chiquita International] [55-1], Chiquita brands, Inc. [Chiquita Brands] [56-1], Dole Food Company, Inc. [Dole Food] [27-1, 134-1], Dole Fresh Fruit Company [Dole Fruit] [28-1], Standard Fruit and Steamship Company [Standard Steamship] [26-1] and Standard Fruit Company [Standard Fruit] [29-1, 146-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed a motion to remand [21-1], and a motion to clarify [133-1] a ruling entered by the Court on or about May 20, 1997, regarding service of process on Coahoma Chemical, Inc.[1] Defendants have filed a motion to reconsider [135-1] the same order. Finally, Del Monte has filed a motion to dismiss for *forum non conveniens* [103-1], and to enjoin future litigation [103-2] by this plaintiff. After due consideration of the briefs of counsel, the applicable law, and being otherwise fully advised in the premises, this Court finds as follows.

Statement of Facts

The plaintiff in this case is one of several similarly filed suits brought by residents and citizens of foreign countries against the defendants. Valdez-C is a citizen of Panama. (Am. Compl., ¶ 1.) According to the allegations of the complaint, Valdez-C was exposed to the manufacturer defendants' dibromochloropropane [DBCP] products while working in banana fields in Panama between 1959-1990. (*Id.*, ¶ 5.) Valdez-C asserts that he was employed by one or more of the defendants named in the complaint. (*Id.*, pp. 5-6.)

Valdez-C worked in a banana growing region of Panama

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[1]Coahoma Chemical Company, Inc., [Coahoma I] was incorporated on January 15, 1950, and operated until its dissolution on August 27, 1973. A second Coahoma Chemical Company, Inc. [hereinafter, Coahoma II]was incorporated on August 31, 1973, and operated until 1991. The Court is unable to determine from the pleadings and information presented which of these entities the plaintiff intended to sue.

and injected a nematocide into the soil to protect against nematodes found in cultivated soils, and known to attack the roots of banana plants. (*Id.*, p. 8.) Nematocides contain DBCP, which has been found by the Environmental Protection Agency [EPA], and the National Cancer Institute, to be a probable human carcinogen. (*Id.*, p. 9.) Plaintiff claims to have suffered permanent injury as a result of the alleged exposure to DBCP, including, but not limited to, severe injury to his reproductive capabilities, which was diagnosed less than two years prior to the filing of this complaint. (*Id.*, p. 5.) Plaintiff contends that he suffered a form of sterility known as germinal cell aplasia, which means that his body does not produce sperm. (*Id.*, p. 8.)

Plaintiff complains that as a result of the alleged negligence of the defendants in producing, selling or otherwise placing materials containing DBCP into the stream of commerce, he was exposed to the chemical DBCP which allegedly caused his resulting injuries. (*Id.*, p. 13.) The complaint asserts a cause of action for failure to warn of the alleged dangerous characteristics of DBCP by failing to place adequate warnings in the plaintiff's native language on the containers of DBCP concerning the health hazards of exposure to DBCP, or requesting that subsidiaries or affiliates do so. (*Id.*, pp. 12, 14.)

According to the allegations in the complaint, in August 1977 the EPA banned DBCP from all but a few uses in Hawaii, and only with the use of protective equipment, although DBCP could still be exported. (Am. Compl., pp. 12-13.) According to research conducted on the chemical, DBCP was found to be readily absorbed through the skin and high in toxicity in inhalation. (Pl.'s Resp., Exh. A, Exh. 2, p. 11.) As early as 1961, studies conducted for Dow Chemical Company [Dow][2] on DBCP called for workplace concentrations of the chemical to be kept below one part per million [ppm], with use of impermeable protective clothing if skin contact was likely. (Pl.'s Resp., Exh.

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[2]Dow manufactured DBCP under the trade name "Fumazone."

C, p. 12.) The report concluded that DBCP was readily absorbed through the skin, with high toxicity in inhalation, and that liver, lung and kidney damage may be expected and testicular atrophy may result from prolonged, repeated exposure. (*Id.*) The allegations in the complaint contend that a toxicology card in Dow's medical library prepared on DBCP noted possible testicular damage, eye and skin affects, and liver and kidney damage. (Am. Compl., p. 11.) The export of DBCP was not banned, however, and the plaintiff has provided copies of invoices which reflect that Shell Oil Company [Shell][3] sold Nemagon to Standard Steamship for use in Costa Rica and the Ivory Coast in September 1977, and that Standard bought DBCP for use in the Phillippines, Honduras and Nicaragua in 1979. (Pl.'s Resp., Exh. A; Exh. C, pp. 21-22.) The product was often shipped through Standard Steamship's facility at Gulfport, Mississippi. (*Id.*, Exh. A.) Plaintiff has established that Castle & Cook, Inc. [Castle & Cooke] purchased Fumazone for use in Costa Rica, Honduras, Nicaragua, Ecuador and "other foreign destinations in Latin America named by buyer" to be shipped to the buyer's warehouse in Gulfport, Mississippi, during 1975-1979. (Am. Compl., Exh. O.) Plaintiff alleges that when Dow informed Standard Fruit that Dow planned to halt sales of DBCP in anticipation of EPA test results, Standard Fruit vehemently objected to such a policy. (Am. Compl., p. 13.) Standard Fruit allegedly agreed to indemnify Dow against claims for injuries resulting from DBCP use in exchange for continued sales. (Pl.'s Resp., Exh. C, p. 17.)

Valdez-C contends that the DBCP products were shipped into Panama from ports located in the United States, including Gulfport, Mississippi. (*Id.*, p. 12.) The plaintiff seeks damages from the defendants because products allegedly causing his injuries were manufactured, formulated, sold, distributed, or used by the named defendants. (*Id.*, p. 4.)

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[3]Shell manufactured DBCP under the trade name "Nemagon."

Pertinent to this motion are the allegations of residencies of the parties listed in the complaint. Taking the allegations of the complaint as true for purposes of this motion, Valdez-C is a resident of Panama. (*Id.*, p. 2.) The plaintiff asserts that each defendant is either a citizen of the state of Mississippi; or, if a resident of a state other than Mississippi, are authorized to transact business in Mississippi pursuant to Mississippi Code Annotated § 79-3211, *et seq.* (Am. Compl., p. 2.) Plaintiff further asserts that if the defendants do not fall into he first two categories, the corporations have transacted business within Mississippi without a certificate of authority, but within the contemplation of Mississippi Code Annotated § 13-3-57;) or have committed a tort in whole or in part in Mississippi. (*Id.*)

According to the complaint, Coahoma is a Mississippi corporation with its principal place of business in Mississippi. (*Id.*) Shell is organized under the laws of the state of Delaware and has its principal place of business in Texas. (*Id.*) Shell maintains a registered agent for service of process in Mississippi. (*Id.*) The plaintiffs contend that Coahoma and Shell designed, manufactured, formulated and packaged DBCP containing products in Mississippi. (Pl.'s Resp. to Mot. to Dismiss, p. 3.) Dow, 'also a Delaware corporation, has its principal place of business in Michigan, and has a registered agent for service of process in Mississippi. (*Id.*)

Occidental Chemical Corporation [Occidental] is a New York corporation with its principal place of business in Texas and has a registered agent for service of process in Mississippi. (*Id.* p, 3.) Amvac Chemical Corporation [Amvac] is a California corporation with its principal place of business in California. (*Id.*, p. 4.) Del Monte is a Florida corporation with its principal place of business in Florida. (*Id.*) Plaintiff contends that Del Monte is subject to general jurisdiction because of its contacts with its parent corporation, Del Monte Tropical Fruit Company [Del Monte Fruit], also a Florida corporation which is authorized and qualified to do business in Mississippi. (*Id.*) Del Monte Fruit has a registered agent for service of process in Mississippi. (*Id.*)

The plaintiff makes the same assertions concerning Chiquita International, a New Jersey corporation with its principal place of business in Ohio, and which plaintiff asserts is a subsidiary or alter ego of Chiquita Brands, allegedly authorized and qualified to do business in Mississippi. (*Id.*)

The defendants purchased the DBCP for export, some of which was produced in Mississippi, according to the plaintiffs allegations. The tortuous conduct engaged in by the defendants, according to the plaintiff, involved the design, manufacture, formulation, packaging, and sale of DBCP by Coahoma, either under its own label and/or in Shell's containers. According to the plaintiff's allegations, the defendants continued to purchase DBCP in Mississippi and export the chemical for years after the dangers of the chemical were known and after it was banned for use in the United States. Coahoma I was originally incorporated on January 16, 1950. The company was formed to "own, lease and operate plants, machinery, equipment and appliances for making, manufacturing and processing insecticides, fungicides and chemicals, and to carry on the business of selling the same at retail and wholesale." (Pl.'s Supp. Mot. to Remand, Exh. D.) The shareholders of Coahoma I sold ill of the outstanding stock to Riverside Chemical Co. [Riverside], of Memphis, Tennessee, on December 1, 1972. (*Id.*, Exh. A & Exh. F. pp. 15-16.) Coahoma I was dissolved on August 27, 1993. (*Id.*, p. 8.) Riverside allegedly incorporated a second company, Coahoma II, in September 1972. (*Id.*, pp. 19-22.) Shell reported Riverside as the formulator for its Nemagon product during April 1973. (*Id.*, Exh. E.)

According to the plaintiff, workers on banana plantations in Central America were allowed to use the chemical without being warned of the known hazards of the product. (Am. Compl., pp. 8, 12.) This was allegedly part of a conspiracy by the defendants to "fraudulently, willfully and maliciously" conceal literature the defendants possessed regarding the risks of exposure to DBCP products; publishing, and distributing outdated, misleading, and incorrect materials concerning the effects of DBCP use; and

distorting medical examination results to conceal the health effects of exposure on the plaintiff. (Am. Compl., pp. 16-18.)

Plaintiff avers that Dole Food ordered materials for purchase by Standard Fruit which were to be delivered in Mississippi. (Pl.'s Resp. to Standard's Mot. to Dismiss, p. 12.) The materials were allegedly stored and transported by Standard Steamship, which the plaintiff claims is another alter ego of Dole Food. (*Id.*) Plaintiff asserts that Standard Fruit, Standard Steamship, and Dole Fruit are wholly owned subsidiaries of Dole Food. (*Id.*, p. 17.) Standard Fruit is a wholly owned subsidiary of Dole Fruit, which in tum is a wholly owned subsidiary of Castle & Cooke (*Id.*; Exh. C.)

Plaintiff maintains that the corporate headquarters of Dole Food, Castle & Cooke, Dole Fruit, and Standard Fruit are all located in the same buildings in Westlake Village, California. (*Id.*; Exh. C.) The plaintiff also points to the overlap of officers and directors for the defendants and their corporate parents. (*Id.*, p. 17.) Patrick Nelson is vice-president and General counsel to Dole Food and Dole Fruit, and an officer of Standard Steamship. (*Id.*, Exh. D., p. 16.) David DeLorenzo is president of Standard Fruit and Castle & Cooke, and former president of Dole Food. (*Id.*, Exh. C & Exh. H to Exh. C.) Nelson also stated that he was an officer of "hundreds" of Dole subsidiaries. (*Id.*, Exh. D, p. 44.)

Plaintiff also asserts that one of Standard Steamship's directors, Patricia McKay, could not identify her fellow directors, could not identify the president of Standard Steamship, admitted that she signed consent forms for the company which made board of director meetings unnecessary, and could not recall attending a single board meeting. (*Id.*, Exh. E., pp. 30-36.) Standard Steamship's corporate records reflect that there was no board meeting held for the period 1991-1993. (*Id.*, Exh. F.) Accordingly, the plaintiff contends that Dole Food has numerous subsidiaries which "renders their individual performance virtually meaningless." (Pl.'s Resp. to Dole's Mot. to Dismiss, p. 19.)

Juergen Schumacher, former president of Standard Fruit, was not aware of any board of director meetings for Standard Fruit and had no ongoing contact with the directors of Standard Fruit. (*Id.*, Exh. G., pp. 41-44, 64.) Schumacher also testified that separate profit and loss statements for Standard Fruit are not prepared. (*Id.*, Exh. G, pp. 160, 169.) Nelson could not identify his exact office at Standard Steamship or the companies of which Standard Fruit and Standard Steamship are a corporate parent. (*Id.*, Exh. H., pp. 19-27.) Based on this information, plaintiff asserts that there is an alter ego relationship between Dole Food, Dole Fruit, Standard Fruit and Standard Steamship, and that the activities of each should be imputed to the other. (*Id.*, p. 22.) Plaintiff also points out that Standard Steamship operated a port facility for the delivery of bananas and other products in Gulfport, Mississippi from 1960 through 1990, when it was sold to Castle & Cooke. (*Id.*, p. 20; Exh. D, p. 83.)

Standard Fruit is a subsidiary or alter ego of Standard Steamship. (*Id.*, p. 3.) Plaintiff contends that Standard Fruit is subject to general jurisdiction because of its contacts with its parent corporation, which is authorized and qualified to do business in Mississippi. (*Id.*)

Plaintiff also contends that Standard Fruit "has operated, conducted or engaged in substantial business or business venture in Mississippi which gave rise to plaintiffs cause of action." (Am. Compl., p. 3.) Standard Steamship has a registered agent for service of process in Mississippi. (*Id.*) The same contentions are forwarded about Dole Fruit, a Nevada corporation with its principal place of business in California, and a subsidiary or alter ego of Dole Food; Standard Fruit; and Standard Steamship. (*Id.*)

Standard Fruit argues that it does not have a certificate of authority to do business in Mississippi, nor a registered agent for service of process in Mississippi. (Standard Fruit's Mot. to Dismiss, p. 2.) Plaintiff contends that Standard Fruit has engaged in substantial business in Mississippi, which gave rise to this complaint. (Am. Compl., p. 3.) According to the assistant treasurer of Standard Fruit, David W. Perrigo, Standard Fruit is

not incorporated in Mississippi; conducts no business activities in the state; performs no work or service in the state; has no employees, representatives, or agents in the state; and has no certificate of authority to do business in Mississippi. (Standard Fruit's Mot., Exh. A.) Standard Fruit also argues that Valdez-C is not a citizen of the United States; was exposed to the chemical while employed by one of the defendants in Panama; and all his injuries occurred in Panama. (Standard Fruit's Mot., p. 9.)

Standard Fruit has submitted an affidavit prepared by Schumacher in which he avers that Standard Fruit ceased all operations in Ecuador prior to the filing of the instant lawsuit. (Schumacher Aff., p. 2.) Schumacher avers that Standard Fruit's principal corporate functions, including shareholder and director actions and certain bookkeeping activities take place as of May 10, 1996, in Westlake Village, California. (*Id.*) Schumacher states that neither Standard Fruit or its affiliates ever had any banana plantations in the country of Panama, and never employed banana workers, or used DBCP in that country. (Defs.' Supp. Resp., Exh. 15, p. 3; Exh. 18, p. 1.) The plaintiff has stipulated that he cannot establish that he worked for Standard Fruit in Panama, if Standard Fruit had no Panamanian operations. (Pl.'s Resp., Exh. 15.)

Nelson avers that Dole is a Hawaii corporation, which conducts limited business activities in Mississippi in the form of packaged foods sales. (Dole Food's Mot. to Dismiss, Exh. A.) Dole does not maintain a place of business in Mississippi; does not own or lease property in the state; has no bank accounts or employees in the state; conducts some advertising in the state as part of a nationwide advertising campaign; and has not committed a tort in the state. (*Id.*) Plaintiff also maintains that the Dole defendants are alter egos of Standard Fruit's foreign subsidiaries. (Pl.'s Resp. to Dole Food's Mot., p. 9.)

Plaintiff maintains that the defendants committed a tort in whole or in part in Mississippi by intentional, negligent and/or reckless conduct in designing, manufacturing, formulating, packaging, shipping, transporting, selling, distributing, and using

DBCP. (Pl.'s Resp. to Del Monte's Mot. to Dismiss, p. 21.) Plaintiff contends that the defendants engaged in an ongoing conspiracy to prevent individuals who may be exposed to DBCP from learning the dangers of the product. (*Id.*) Plaintiff also asserts that Mississippi was a major conduit in the export of DBCP containing products to Latin American countries. (*Id.*, p. 24.)

According to Scott Hendler, an attorney who conducted extensive discovery into this issue, there is evidence that Del Monte shipped 250 industrial drums of Dow's DBCP product "Fumazone" to Costa Rica. (Pl.s' Resp., Exh. A & Exh. 1.) The export record shows that Del Monte shipped Fumazone from the loading port of Tampa, Florida, on the vessel *FRUCO* with the discharge port destination of Costa Rica in January 1977. (*Id.*, Exh. 1.) Del Monte asserts that it has never used any port facilities in Mississippi. (Del Monte.'s Mot. to Dismiss, p. 2, Exh. 1, ¶ 7.) Del Monte Fruit is incorporated in Delaware, with its principal place of business in Florida. (*Id.*, Exh. 2, ¶¶ 3-5.) Del Monte Fruit does not have a registered agent or service of process in Mississippi, has no certificate of authority to do business in Mississippi, and is qualified to do business only in Delaware and Florida. (*Id.*)

The plaintiff also contends that Chiquita International benefitted from sales of its corporate family products" which pass through Mississippi and are sold to Mississippi customers. (Pl.'s Resp. to Chiquita International and Chiquita Brand's Mot. to Dismiss, p. 2.) Chiquita International imports a substantial amount of bananas through Gulfport, and exported a large amount of agricultural supplies, which included DBCP, also through Gulfport. (*Id.*) Maritrop Trading Company [Maritrop], a wholly owned subsidiary of Chiquita Brands, transported DBCP to Latin America on its own or through an agent. (*Id.*, Exh. D.) The Plaintiff asserts that United Brands Company, Chiquita International's predecessor-in-interest, ordered DBCP from the manufacturer which was transported from the manufacturer to Gulfport by Maritrop. (*Id.*, p. 4.) Maritrop then

loaded the materials on ships bound for Latin America for use on Chiquita International's or its affiliates' farms, according to the plaintiff. (*Id.*) Chiquita International's human resources department administers the benefit plans of Chiquita International and its subsidiaries. (*Id.*, p. 18, Exh. B, pp. 30-44.) Chiquita International provides data processing, tax, payroll and legal services to Chiquita International and its subsidiaries. (*Id.*, Exh. B., pp. 61-2.)

Chiquita Brands manages shipping, marketing, sourcing, selling and distribution of ananas. (*Id.*, p. 126.) Keith Lindner, president and chief operating officer of Chiquita International, is also president of Chiquita Brands. (Pl.'s Resp., p. 18; Exh. B., pp. 60-1.) The plaintiff claims that the Lindner family controls all of Chiquita International and its subsidiaries, making the subsidiaries alter egos of Chiquita International. (*Id.*) Plaintiff also asserts that all senior operating management are employees of Chiquita International and also have responsibility for certain subsidiaries owned by Chiquita International. (*Id.*)

Export records for Maritrop for the years 1977 through November 1993 reveal that Maritrop shipped nematicide and agricultural fungicides from Gulfport to an unknown destination. (Pl.'s Resp., Exh. E.) Standard Steamship also utilized Gulfport to ship Fumazone, agricultural fungicides, nematicide and nematocides to unknown destinations during those years, as did Dole Food. (*Id.*) Based on this information, the plaintiff claims that Chiquita International and Standard Fruit purchased and shipped DBCP from Gulfport, Mississippi. (*Id.*, Exh. A.)

William H. Gresham, an officer and shareholder of Coahoma I from January 16, 1950, until December 1, 1972, was one of the original incorporators of the company. (Shell's Supp. Mot., Exh. 1, Gresham Aff., p. 1.) The defendants assert that Coahoma I was dissolved, and have provided a copy of a newspaper article dated May 30, 1973, which includes a legal notice of intent to dissolve Coahoma I. (Defs.' Resp. to Mot. to Remand, p. 2 & Exh. 9.) In addition, according to the defendants, Coahoma II was not an operating company and did not produce

the subject chemical, was never properly served with process and is not properly a party to this suit. (*Id.*, pp. 3-4.) According to the defendants, Coahoma II is a dissolved corporation, and has been since May 14, 1991. (Defs.' Resp. to Mot. to Remand, Exh. 7.)

Affidavits provided by Gresham and John W. Duff, who was employed by Riverside as regional sales manager in 1973, aver that Riverside was the exclusive operating and distributing entity of the Clarksdale plant and that no Coahoma entity engaged in the operation, manufacturing, or placement in the stream of commerce any pesticide, including DBCP. (*Id.*, Exhs. 1-2.) The defendants maintain that Coahoma II was not a successor in interest to Coahoma I. (*Id.*, p. 3.) Duff avers that Riverside sold the Clarksdale facility to MFC Services [MFC] in September 1977. (*Id.*, Exh. 2.) Red Panther Chemical Company, Inc. [Red Panther] was later formed by MFC and two farmers' cooperatives. (*Id.*) Defendants assert that this information establishes that after December 1, 1972, neither Coahoma I nor II operated the Clarksdale facility or engaged in the operation, manufacturing, or distribution of any pesticides, including DBCP. Coahoma I may not be sued under Mississippi law because it dissolved, thus making joinder of Coahoma I fraudulent, based on the defendants' assertions. (*Id.*, p. 7.) Furthermore, the defendants profess that Coahoma II was not properly served, was not a successor to Coahoma I, and did not produce any DBCP products which the plaintiffs may have used. (*Id.*)

Plaintiff has countered this information by establishing that Coahoma II had active pesticide labels until 1987, owned the Clarksdale, Mississippi plant until 1977, paying property taxes on the facility and was listed as a subsidiary of Riverside., (Pl.'s Supp. to Mot. to Remand, Exhs. A, B, C & D.) Plaintiff has produced evidence that Coahoma II, a division of Riverside, has 16 "Red Panther" brand pesticide products, and one product named "Twin-Kill" listed as registered to that company. (Pl.'s Resp. to Shell, Exh. A.) Coahoma I owned the "Red Panther" trademarks, associated with agricultural chemicals and

nematocides, at the time the stock was sold to Riverside. (Pl.'s Supp. Remand Mot., Exh. F, p. 24.) Those trademarks were assigned to Riverside effective December 1, 1972. (*Id.*, Exh. P.) The same trademarks were subsequently assigned to MFC, of Jackson, Mississippi by Riverside on August 31, 1977. (*Id.*) Plaintiff maintains that banana workers have testified that they were exposed to DBCP products labeled with the Red Panther logo. (*Id.*, Exh. N.) Gresham testified that the names "Coahoma" and "Red Panther" became synonymous. (*Id.*; Exh. F, p. !4.) Gresham also testified that he was employed by Riverside in a consulting capacity after Coahoma I was sold in 1972, and that the Clarksdale, Mississippi continued to make Nemagon until 1977. (*Id.*)

Plaintiff contends that Riverside dissolved Coahoma I on August 27, 1973. (*Id.*, Exh. F, p. 8.) Coahoma II was incorporated on August 29, 1973, with the directors named as Semmes Luckett, Leon L. Porter, Jr., and S.H. Roberson. (*Id.*, Exh. G.) Coahoma II was incorporated for purposes of owning, leasing, and operating plants, machinery, equipment and appliances for the making manufacturing and processing of insecticides, fungicides and chemicals and to sell those products both on the wholesale and retail markets. (*Id.*) There is no mention of Riverside in the document. (*Id.*) Plaintiff asserts that Coahoma II was properly served process and joined in this lawsuit. (Pl.'s Supp. Remand Mot., p. 7.)

Plaintiff maintains that this suit should be remanded to state court, because of Coahoma II's presence in the lawsuit. Plaintiff contends that Coahoma II owned and paid property tax on the Clarksdale facility until 1977; maintained 17 active pesticide labels until 1987; was listed as a Riverside subsidiary, operating in Clarksdale; and DBCP was formulated at the Clarksdale facility after 1973. (*Id.*, Exhs. F., pp. 40-3; 1; H; J; K; and M.) This information establishes that Coahoma II was an active company, and, according to the plaintiff, presents the possibility of recovery from Coahoma II as a defendant in this action. (*Id.*)

According to the defendants, the label submitted by the

plaintiffs indicated that the chemical was not approved for use on bananas, and under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], 7 U.S.C. § 136, *et. seq.*, these products could not be used at foreign banana plantations. (Defs.' Resp. to Remand Mot., Exh. 13.) A trademark licensing agreement entered between Shell and Coahoma I on June 23, 1965, listed Nemagone® C and Bidrin®, and limited the use the trademarks for these products to the continental United States. Defs.' Supp. Resp., Exh. 5, ¶ 3.) Based on this information, the defendants assert that there is no competent evidence that any Nemagon placed into the stream of commerce by Coahoma I vas intended for use or purchased for use at the foreign banana plantations at issue in this suit. Defs.' Supp. Resp., p. 9.)

The plaintiff also contends that Chiquita purchased "thousands" of gallons of DBCP for export, some of which were delivered to Mississippi. (*Id.*, p. 11.) Plaintiff contends that the companies "conspired" to keep information concerning the dangers of DBCP from workers, dock workers and those exposed to the material during its transport. (*Id.*)

According to the plaintiff, the defendants committed a tort, or a series of torts in Mississippi which include defendants' alleged intentional, negligent, and/or reckless conduct in designing, manufacturing, formulating, packaging, shipping, transporting, selling, distributing and using DBCP. (*Id.*, p. 23.) The plaintiffs contend that these actions took place while the defendants actively concealed the known human health risks surrounding the use of DBCP. (*Id.*) The plaintiffs claim that Mississippi was a major conduit for the export of DBCP-containing products to Latin American countries, because DBCP used in Latin American countries was frequently purchased in Gulfport, Mississippi. (Pl.'s Resp. to Mot. to Dismiss, p. 3; Pl.'s Supp. Remand Mot., Exh. E.) According to the plaintiff, there is documentation the DBCP designed, manufactured, formulated, packaged, labeled and sold by the manufacturer defendants was sold in Mississippi and exported by the grower defendants from Mississippi. (*Id.*) According to the plaintiff, Coahoma I and II

designed, manufactured, formulated, packaged and sold DBCP under its own label; in Shell's containers; and under the Red Panther label. (*Id.*, pp. 3-4; Exhs. E, F & G.)

The defendants assert that there is federal question jurisdiction in the case because the plaintiff requested medical monitoring as a result of the alleged exposure to DBCP and these types of claims have provided a foundation for federal question jurisdiction. (Defs.' Supp. Resp., p. 5.) The defendants also assert that the failure to warm or inadequate warning claims are preempted by the FIFRA. (*Id.*)

Conclusions of Law

Plaintiff argues that the Court should first decide the motion to remand prior to making any determination concerning personal jurisdiction over any of the defendants. (Pl.'s Resp., p. 5.) A federal court has the discretion to decide the order of consideration of pending motions, and can properly decide a motion to dismiss for lack of jurisdiction before a motion to remand. *Villar v. Crowley Maritime Corp.*, 990 F.2d 1489, 1494 (5th Cir. 1993), *reh'g denied* 997 F.2d 883 & cert. denied 510 U.S. 1044 (1994). In addition, a district court may also decide a notion to dismiss for *forum non conveniens* prior to addressing a motion to remand. *Villar*, 990 F. 2d at 1497-98. The Court is mindful, however, that subject matter jurisdiction must be present to allow a valid judgment on either issues to be entered. *Marathon Oil Co. v. Ruhrgas,* A.G., 115 F.3d 315, 318 (5th Cir. 1997), *petition for cert. filed September* 8, 1997; *Torres v. Southern Peru Copper Corp.*, 113 F.3d 540, 542 (5th Cir. 1997).

I. Federal Question or Diversity Jurisdiction and Remand

The suit was removed to this Court pursuant to 28 U.S.C. §§ 1331 and 1332. The plaintiff has filed a motion to remand, asserting that 28 U.S.C. § 1441(b) prohibits removal of diversity cases if one of the defendants, in this case the Coahoma entities, are citizens of the forum state. The defendants claim that there is federal question jurisdiction either because of FIFRA preemption

or the presence of a claim which implicates important international policy, which is allegedly satisfied in this case by plaintiffs claim for medical monitoring. The presence of federal question jurisdiction would moot plaintiff's concerns regarding the removal based on diversity.

A. FIFRA Preemption

The defendants contend that there is federal question jurisdiction under the plaintiff's claims; regarding the alleged failure to warn or inadequate warning because these claims are preempted by the FIFRA. (*Id.*) FIFRA contains certain labeling requirements for pesticides, and provides that although states may regulate the use and sale of pesticides, states "shall not impose or continue in effect any requirements for labeling or packing in addition to or different from those required [by FIFRA]." 7 U.S.C. § 136v(b).

A case may be removed if the district court of the United States has original jurisdiction. 28 U.S.C. § 1441(a). Original jurisdiction includes all civil actions arising under federal law, which must appear on the face of a properly pleaded complaint. *Louisville & Nashville RR v. Mottley,* 211 U.S. 149 (1908). If federal law so dominates an area of a plaintiffs complaint, that area is considered completely preempted and claims in that area are considered federal. *Caterpillar v. Williams,* 482 U.S. 386, 393 (1987). As a result, a statute's preemptive force may "convert an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Metropolitan Life Ins. Co. v. Taylor,* 481 U.S. 58, 65 (1987).

Any state law warning requirements are completely preempted by FIFRA. *MacDonald v. Monsanto Co.,* 27 F.3d 1021 (5th Cir. 1994); *Miller v. E.I DuPont de Nemours & Co.,* 880 F. Supp. 474, 477 (S.D. Miss. 1994). A defendant, however, is not entitled to remove a case simply because federal preemption law provides a defense, even if it is a complete

defense to plaintiff's state law claims. *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust,* 463 U.S. 1, 14 (1983). The Court finds that federal question jurisdiction is not present over this suit simply by virtue of plaintiff's failure to warn/inadequate warning claims. *See Rodriguez v. Shell* Oil Co., 818 F. Supp. 1013 (S.D. Tex. 1993); *Martinez v. Dow Chem. Co.,* 996 WL 502461 (E.D. La. 1996).

B. Medical Monitoring

Defendants assert that federal question jurisdiction exists in this case because plaintiff has claimed a need for medical monitoring as a result of his alleged exposure. (Dow's Remand Resp., p. 5.) Defendants maintain that an alien's request for medical monitoring implicates foreign relations. (*Id.*, citing *Sequihua v. Texaco, Inc.,* 847 F. Supp. 61 (S.D. Tex. 1994). Part of the plaintiffs' claim in *Sequihua* contained a request for creation of a trust fund and court supervision over a medical monitoring "scheme" involving Ecuadorian citizens. *Sequihua,* 847 F. Supp. at 63. Although this case does not appear to involve a request for the creation of a trust fund for future medicals or medical monitoring, it does involve injuries to foreign citizens on foreign soils. This would implicate important foreign relations, and the Court finds that there is federal jurisdiction in this case. *See Marathon Oil,* 115 F.3d at 320.

C. Coahoma Chemical -- Its Effect on Diversity Jurisdiction and Removal

The plaintiff contends that Coahoma is a viable defendant in this lawsuit, thereby prohibiting removal of the case. (Pl.'s Mot. to Remand.) Although the Court has found federal jurisdiction in this case, this issue and other issues associated with the Coahoma defendants will be addressed, as an alternative ruling in the event subsequent findings eliminate federal jurisdiction. The Court must first find that Coahoma I and/or

Coahoma II are proper parties to this suit, and service of process has been perfected on these entities.

Plaintiff filed a motion for clarification of an order dated May 20, 1997, which allowed plaintiff additional time to perfect service of process on certain defendants. (Ct. R., Doc. 139.) Plaintiff is now seeking to determine if the Court deemed Coahoma II properly served, pursuant to Mississippi Code Annotated § 79-5-5.04,[4] and, as plaintiff contends, as a successor in interest to Coahoma I (Pl.'s Clarification Mot., p. 3.) Plaintiff maintains that section 79-5-5.04 outlines the method for properly perfecting service of process on dissolved corporations. (*Id.*, n.1.)

Defendants also contend that the May 20, 1997, order should be reconsidered regarding certain areas. (*Belteton-Rivera v. Coahoma*, 1:96cv359GR, Doc. 135.) According to the defendants, plaintiff intended to sue Coahoma II, and not Coahoma I (*Id.*, p. 2.) This is evidenced by the style of the case which references Coahoma II as "successor-in-interest" to Coahoma I (*Id.*)

The defendants also assert that Coahoma II is not a successor in interest to Coahoma I (*Id.*, p. 2.) The attempted

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[4]The statute provides as follows:

> (a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.
>
> (b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:
>
> (1) The date the corporation receives the mail;
>
> (2) The date shown on the return receipt, if signed on behalf of the corporation;
>
> or,
>
> (3) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

service of process on S.T. Polk was supposed to effect Coahoma II, because Polk was never secretary for Coahoma I (*Id.*, pp. 3-4.) The defendants make similar arguments about plaintiffs attempt to perfect service through R.A. Filgo. (*Id.*, p. 4.) Defendants maintain that Gresham is not the proper officer to accomplish service on either Coahoma entity. (*Id.*, pp. 5-8.) Finally, defendants reiterate the original argument concerning the plaintiffs potential claims against Coahoma I, citing Miss. Code Ann. § 794-14.07 for the proposition that claims are barred. (*Id.*, p. 8.) Defendants maintain that the language of the statute provides that the plaintiff should have brought his claim by May 30, 1978, regardless of when he discovered his injury. (*Id.*, pp. 8-9.)

At the outset, the Court acknowledges the parties' confusion over the May 20, 1997, order regarding service of process over the Coahoma entities. The Court is unclear which of the Coahoma entities is plaintiff's intended defendant. There appears to be some misunderstanding on the part of the defendants about the contents of the May 20, 1997, order, which spawned portions of the request for reconsideration. No "findings" were made concerning plaintiff's motion to remand by including summaries of either party's arguments concerning the Coahoma issue in the May 20, 1997, order. The order addressed service of process, only.

The corporation addressed in this motion as Coahoma I was dissolved on August 27, 1973. (Def.'s Recons. Mot., Exh. A.) The pleadings are unclear concerning plaintiff's claims against Coahoma entities, although defendants assert that the pleadings establish that Coahoma. II and not Coahoma I is plaintiff's intended defendant. (*Id.*, p. 2.) Based on the information before the Court, it appears that Coahoma I completely transferred its assets at the time Riverside purchased the company on December 1, 1972. (Pl.'s Supp. Remand Mot., Exh. F, pp. 18-19.) In addition, there is no evidence presently before the Court that Riverside carried over any of the officers, directors, or shareholders from Coahoma I at the time of its sale. Furthermore,

Gresham has testified that he was never an officer or director of Riverside. (Defs.' Recons. Mot., Exh. D., pp. 17-19, 31.)

When Coahoma II was incorporated on August 31, 1973, the following individuals were listed as officers: J.L. Harpole, president; J.A. Gaston, vice president; S.T. Polk, III, secretary; and J.A. Gaston, treasurer. (*Id.*, Exh. B.) Directors were listed as R.A. Filgo and W.R. Sherman. (*Id.*) Harpole was listed as the registered agent. (*Id.*)

The traditional rule has been that a corporation which acquires manufacturing assets from another corporation does not assume the liabilities of the predecessor corporation from which the assets are acquired. *Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985). There are four exceptions to this rule:

(1) When the successor expressly or impliedly agrees to assume the liabilities of the predecessor;

(2) When the transaction may be considered a *defacto* merger;

(3) When the successor may be considered a "mere continuation" of the predecessor; or

(4) When the transaction was fraudulent.

Mozingo, 752 F.2d at 174.

None of these factors appears in this case. There is no evidence that Riverside expressly or impliedly assumed the liabilities, if any, of Coahoma I. There is no evidence that Coahoma II was a "mere continuation" of Coahoma I. The traditional rule with regard to this exception is that "a corporation is not to be considered a continuation of a predecessor unless, after the transfer of assets, only one corporation remains, and there is an identity of stock, stockholders, and directors between the two corporations. *Mozingo,* 752 F.2d at 174-75.

None of this was present in the Coahoma I transfer to Riverside, based on the evidence before the Court. Under the traditional rule, the transfer of assets from one corporation to a

successor must leave only one corporation remaining, and there must be an identity of stock, stockholders, and directors between the two corporations. None of these elements are present in this case. The Court, therefore, finds that there is no evidence before it that Coahoma II is a successor-in-interest to Coahoma I.

The defendants argue that plaintiffs attempt to perfect service of process by serving Polk and Filgo were attempts to service Coahoma II and not Coahoma I. The May 20, 1997, order did not attempt to characterize these actions as an attempt to serve Coahoma I; plaintiff's assertions about valid service of process were merely summarized and cited. Logic dictates that the company the plaintiff was attempting to serve in these efforts was Coahoma II. Under Mississippi law, service of process may be perfected on a domestic or foreign corporation by "delivering a copy of the summons and of the complaiht to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." MISS.R.CIV.P. 4(d)(4).

The plaintiff contends that service of process on Coahoma II was perfected pursuant to MISS. CODE ANN. § 79-4-5.04(b). The plaintiff contends that service of process was accomplished under the statute because more than five days have elapsed since notice was mailed. (Pl.'s Remand Mot., pp. 4-5.) Defendants contend that the service is invalid because the notice was not properly addressed, as required by the statute, and evidenced by the fact that the notice was returned to the plaintiff marked by the post office with the notice "insufficient address." (Defs.' Opp'n to Remand, Exh 10.) The Court concurs that plaintiff cannot meet the statutory mandates by utilizing service of process which clearly establishing that the wrong address was employed.

Plaintiff also attempted to perfect service on Coahoma II through Harpole, in spite of the fact he was deceased, and Filgo, by serving Filgo's wife. (Defs.' Opp'n to Remand, pp. 7-8; Pl.'s Remand Mot., Exh. D.) It is axiomatic that process on a defendant corporation is only accomplished by delivering the notice to an officer or agent of the company or someone

designated by law to receive service on behalf of the corporation. *First Jackson Securities Corp. v. B.F. Goodrich Co.*, 176 So.2d 272, (Miss. 1965). Service on the spouse of an officer or agent cannot be considered properly perfected service of process on a corporation, dissolved, defunct or otherwise. The Court finds that Coahoma II has not been properly served with process. There remain other problems with maintaining Coahoma II as a defendant in this case.

The defendants have asserted that Coahoma II was fraudulently joined to defeat diversity. (Def.'s Opp'n. to Remand, pp. 4-9.) Diversity hinges on the facts as established at the commencement of the lawsuit, and subsequent changes in citizenship of the parties, or substitution of the parties are irrelevant. *Gaines v. Dixie Carriers, Inc.*, 434 F.2d 52 (5th Cir. 1970). In a fraudulent joinder case, the Court is directed to analyze the plaintiff's state court pleadings in light of the state law which controls on the substantive issues to determine whether, under any set of facts alleged, a claim against the defendant could be asserted under state law. *Ford v. Elsbury*, 32 F.3d 931, 935 (5th Cir. 1994), *reh'g denied* October 20, 1994. The Fifth Circuit has indicated that the use of affidavits and documents to resolve an issue of jurisdiction is acceptable. *Burden v. General Dynamics Corp.*, 60 F. 3d 213, 217 (5th Cir. 1995).

To succeed on a claim of fraudulent joinder the defendant must establish that there is no doubt that state law would not impose liability on the alleged fraudulently joined defendant. *Jernigan v. Ashland Oil Inc.*, 989 F.2d 812, 816 (5th Cir. 1993), *cert. denied* 510 U.S. 868. If there is a reasonable basis for predicting that state law might impose liability, the plaintiff is given the benefit of the doubt and the case must be remanded. *Horton v. Scripto-Tokai Corp.*, 78 F. Supp. 902, 906 (S.D. Miss. 1995).

Although the plaintiff has supplied a myriad of information about Coahoma II's chemical production, association with Riverside, and alleged "use" of the "Red Panther" label, none of

the products which plaintiff attributes to Coahoma II appear to be nemacides. (Pl.'s Surrebuttal to Shell's Rebuttal, Exh. A.) The Court cannot conceive that production of products other than the one which is central to plaintiffs lawsuit has any relevance to this lawsuit, or would subject a company to liability for injuries allegedly related to the application of a totally different product than that which it produced. Based on the information presented in support of these motions, the Court, therefore, concludes that Coahoma II has been fraudulently joined, and should be dismissed from this lawsuit. In the alternative, if Coahoma II has been properly served with process, and if a finding is made that Coahoma II was not fraudulently joined and that this Court does not have federal question jurisdiction in this case, the Court finds that this suit should be remanded to state court, as being improvidently removed for lack of diversity jurisdiction. 28 U.S.C. § 1441(b).

The Court also has grave reservations about the propriety of maintaining the plaintiffs claims, if any, against Coahoma I, in light of the fact that it is a dissolved corporation. The Court concludes that in absence of any evidence of the viability of suit against Coahoma I, that it should be dismissed from the lawsuit. Alternatively, if suit against Coahoma I is possible, this Court does not have federal question jurisdiction in this case, and the Court finds that this suit should be dismissed.

II. Standard Steamship and Standard Fruit's Motions to Dismiss

In this case, Standard Fruit has established that neither it nor any of its affiliates employed Valdez-C, a fact to which the plaintiff has stipulated that he cannot establish that he worked for Standard Fruit. (Defs.' Supp. Resp., Exh. 15, p. 3; Exh. 18, p. 1.) Standard Fruit has also established that neither it nor its affiliates ever had any banana plantations in the country of Panama, ever employed banana workers, or used DBCP in that country. (*Id.*, Exh. 18.)

The plaintiff has provided information that Dole Latin America "sources and transports bananas grown in . . . Panama for markets principally in North America . . . . (Am. Compl., Exh. B, pp. 2-3.) The plaintiff has also provided information that Dole Latin America "produces bananas . . . through associated producers or independent growing arrangements . . . in . . . Panama." (*Id.*, p. 10.) Jack DeMent, director of agricultural research for Standard Fruit, testified that Standard Fruit provided technical services to certain contract farms in Ecuador (*Id.*, Exh. D, pp. 120-3.) Robert Allard, an Occidental Chemical employee, testified that DBCP was shipped by Castle & Cooke to Panama through Hawaii for use on banana fields. (*Id.*, Exh. L, pp. 61-76.) The Court finds that this information is sufficient to establish, for jurisdictional considerations, that the plaintiff could have been employed by one of these defendants.

III. Personal Jurisdiction

The defendants' motion for dismissal is based upon a lack of personal jurisdiction. "When a nonresident defendant presents a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing the district court's jurisdiction over the nonresident. The court may determine the jurisdictional issue by receiving affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery." *Stuart v. Spademan,* 772 F.2d 1185, 1192 (5th Cir. 1985).

Personal jurisdiction over nonresident defendants is assessed by the law of the forum state. *Omni Capital Int'l v. Rudolph Wolff & Co.*, 484 U.S. 97, 108 (1987). Uncontroverted allegations in the complaint are taken as true. *Wyatt v. Kaplan,* 686 F.2d 276, 280 (5th Cir. 1982), *reh'g denied* 782 F.2d 1002 (1983). If the unsubstantiated allegations are controverted by affidavit or declaration, the affidavit or declaration prevails over the allegation. *See Travelers Indem. Co. v. Calvert Fire Ins. Co.,* 798 F.2d 826, 831 (5th Cir. 1986), *modified* 836 F.2d 850

(1988).

A. Mississippi's Long Ann Statute

Plaintiff claims that the Court has jurisdiction over these defendants under the Mississippi Long Arm Statute, Mississippi Code Annotated § 13-3-57. (Pl.'s Resp. to Chiquita Brand's Mot. to Dismiss, p. 7.) In Mississippi, a two-step process is involved in determining personal jurisdiction. *Cycles, Ltd. v. Digby, Inc.*, 889 F.2d 612, 616 (5th Cir. 1989), *reh'g denied* January 4, 1990. First, the defendant must be amenable to suit under Mississippi law, and second, the exercise of jurisdiction must correspond with the dictates of the Fourteenth Amendment due process clause. *Smith v. DeWalt Prods. Corp.*, 743 F.2d 277, 278 (5th Cir. 1984). The burden of establishing the district court's jurisdiction over the defendants is clearly on the plaintiff. *Wilson v. Belin*, 20 F.3d 644, 648 (5th Cir. 1994), *cert. denied* 513 U.S. 930 (1994).

The Mississippi Long Arm Statute provides in relevant part as follows:

> Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state.

MISS. CODE ANN. § 13-3-57 (1996 Supp.).

In other words, to establish personal jurisdiction over these defendants, the plaintiff must establish jurisdiction under either the "contract," the "tort," or the "doing business" provision of the long-arm statute. *Cycles,* 889 F.2d at 617. A nonresident plaintiff cannot utilize the "doing business" portion of the statute to obtain personal jurisdiction over a nonresident defendant. *Smith,* 743 F.2d at 279; *Murray v. Remington Arms Co.*, 795 F. Supp.805, 808 (S.D. Miss. 1991).

The plaintiff attempts to utilize the "doing business" concept by discussing the proposition contained in Mississippi Code Annotated § 79-1-27, a statute which has been interpreted as supplemental to the long-arm statute. See Arrow Food Distrib., Inc. v. Love, 361 So.2d 324, 327 (Miss. 1978), *cert. denied* 439 U.S. 1073 (1979). This statute has been repealed, effective January 1, 1998, and cannot serve as basis for jurisdiction over these defendants. Gross v. *Chevrolet Country, Inc.*, 655 So.2d 873, 878-79 (Miss. 1995), *cert. denied* 116 S.Ct. 817 (1996).

The plaintiff in this case also cannot use the contract portion of the statute, as the statute only provides for contracts made with Mississippi residents. MISS. CODE ANN. § 13-317; *Moore Video Distrib. v. Quest Entertainment,* 823 F. Supp. 1332, 1337 (S.D. Miss. 1993); *Herrley v. Volkswagen of Am., Inc.*, 957 F.2d 216, 218 (5th Cir. 1992). It is clear that the plaintiff is not a resident of Mississippi and it is equally apparent that the subject defendants are nonresident corporations. The plaintiff, therefore, is precluded from using this provision to obtain personal jurisdiction over these defendants in Mississippi.

The tort provision of the statute extends to nonresident plaintiffs, if any element of the tort was committed in Mississippi. *Allred v. Moore & Peterson,* 117 F.3d 278, 281 (5th Cir. 1997). The tort "occurs" where and when the actual injury takes place under Mississippi law. *Jobe v. ATR Mktg., Inc.,* 87 F.3d 751, 753 (5th Cir. 1996) (the "tort" prong of the Mississippi long-arm statute did not authorize jurisdiction over the nonresident defendant in Mississippi where the act of alleged

negligence was committed and completed elsewhere); *Cycles,* 889 F.2d at 619.

To subject a nonresident defendant to personal jurisdiction under the Mississippi long-arm statute, three requirements must be satisfied: it must purposely do some act or consummate some transaction within the forum state; the cause of action must arise from, or be connection with such acts or transactions; and the requirements of due process must be satisfied. *Applewhite v. Metro Aviation, Inc.,* 875 F.2d 491, 494 (5th Cir. 1989), citing *Collins v. Truck Equip. Sales, Inc.,* 231 So.2d 187 (Miss. 1970). Valdez-C's alleged injury happened in Panama. Yet the plaintiff contends that because the subject chemical was produced in and shipped through Mississippi, at times by certain of the defendants in this case, these acts could enable the tort prong to be applied in this case.

If any element or part of any element of a tort takes place in Mississippi, the Mississippi long arm statute enables a Mississippi court to exercise personal jurisdiction over a defendant who allegedly committed the subject tort. *Smith v. Temco, Inc.,* 252 So.2d 212 (Miss. 1971). The elements of a tort in a negligence action include duty, breach of duty, proximate cause, and injury. *Palmer v. Anderson Infirmary Benevolent Assn,* 656 So.2d 790, 794 (Miss. 1995), *reh'g denied July* 20, 1995. The injury in this case occurred in Panama, where the chemical was applied, and the alleged resulting injury was suffered. The chemical, however, could have been labeled in Mississippi, if it was manufactured in this state before being shipped out of the country. In that case, the exercise of jurisdiction over those companies responsible for its distribution would be proper. The Court finds that if part of the alleged tort was committed in Mississippi, jurisdiction over companies responsible for distribution of the chemical would be proper. As an alternative ruling, the Court finds that if there is no evidence that the offending chemical was labeled in Mississippi, there would be no reason to exercise personal jurisdiction over any of the nonresident defendants in this case based on the tort portion

of the long arm statute. *Jobe,* 87 F.3d at 753.

B. Other Jurisdictional Considerations

Each of the defendants in this case that have raised personal jurisdiction questions shall be separately addressed.

i. Del Monte

Del Monte is incorporated and has its principal place of business in Florida. (*Id.*, ¶ 3.) Del Monte does not have a certificate to conduct business in Mississippi, and has no assets, bank accounts, property owned or leased, offices, agents, employees or indebtedness in the state. (*Id.*; Exh. 2., p. 3.)

The plaintiff attempts to tie Del Monte to this state through contacts of alleged alter-egos of other companies. (Pl.'s Resp. to Del Monte's Mot., p. 9.) Plaintiff asserts that Del Monte purchased "thousands of gallons of DBCP" from Shell, Dow, and Amvac. (*Id.*, p. 11.) Plaintiff contends that DBCP was designed, formulated; manufactured, tested and sold in Mississippi. (*Id.*, p. 18, n.8.) The only specific act which plaintiff attributes to Del Monte, however, is the sale of produce in the state, which according to plaintiff shows systematic and continuous contacts with Mississippi. (*Id.*, p. 11.) Plaintiff contends that Del Monte, acting in conspiracy with the other defendants, wilfully misrepresented and suppressed the "truth as to the risks and dangers associated with the use of and exposure to Defendants' DBCP-containing products. Each of the Defendants aided and abetted the other Defendants in committing the tortuous acts that caused the Plaintiffs injuries." (Am. Compl., p. 17.)

Based on this information, the Court finds that the plaintiff has failed to establish any basis for this Court to exercise personal jurisdiction over Del Monte. There is no evidence that Del Monte has a registered agent in this state; it is incorporated and has its principal place of business in Florida; it does not have

a certificate to conduct business in Mississippi; it has no assets, bank accounts, property owned or leased, offices, agents, employees or indebtedness in the state; and it has not shipped any products from Mississippi ports. (*Id.*, ¶ 3; Exh. 2., p. 3.)

Even if there were a basis for jurisdiction under Mississippi law, Del Monte's presence in the state of Mississippi does not meet the minimum contacts requirement to satisfy a basis for jurisdiction over this defendant. *Burnham v. Sup. Ct.*, 495 U.S. 604, 621 (1990). Mere sales of produce to customers in the forum state without more, cannot bestow jurisdiction over a nonresident defendant such as Del Monte on claims which do not arise out of those sales or the forum-directed activity. *Stuart,* 772 F.2d at 1194. There are no "continuous and systematic contacts" with the forum state on the part of Del Monte beyond sales of produce. The Court concludes that this does not meet jurisdictional requirements, and as a result, the Court finds that Del Monte should be dismissed from this suit for lack of personal jurisdiction. *Helicoperos Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 413 (1984).

ii. Chiquita Defendants

a. Chiquita International

Chiquita asserts that it is not a Mississippi resident and that jurisdiction cannot be imputed on it because of its alleged alter ego Chiquita Brands. (Chiquita Int'l.'s Mot. to Dismiss, p. 2.) In this case, Chiquita International has established through the affidavit of Barbara M. Howland, the administrator of the corporate secretary's office, that Chiquita International is a New Jersey corporation. (Chiquita's Mot. to Dismiss, Exh. A, Howland Aff.) Howland also averred that Chiquita International is not incorporated in Mississippi. Chiquita International does not maintain a place of business; have a registered agent for service of process; conduct business activities; have employees, representatives or agents in the state; and have a certificate of

authority to do business in Mississippi. (*Id.*) In addition, Chiquita International asserts that the plaintiff has made no particular allegations which establish that there are any systematic and continuous contacts necessary to meet the "doing business" prong of the Mississippi long-arm statute. (*Id.*, p. 8.)

The plaintiff counters this crystalline principal by arguing that Chiquita Brands is the alter ego of the co-defendants Maritrop and Chiquita International, which allegedly transported and used DBCP through the port at Gulfport, Mississippi, for use in the subject defendants' banana fields. (Pl.s' Resp., pp. 2-4.) Plaintiff argues that the nonresident subsidiary companies involved in this case can be subject to jurisdiction in this forum because of the activities of the parent corporation which is subject to jurisdiction in Mississippi. (*Id.*, p. 15.) Plaintiff claims that the three companies, Chiquita International, Maritrop and Chiquita Brands "entered into a concerted plan of action" to utilize DBCP on their farms despite the known health hazards of the chemical. (*Id.*, p. 4.) The plaintiff asserts that there is ample evidence that Chiquita Brands purchased "thousands" of gallons of DBCP for export from Mississippi, including Shell's Nemagon and Dow's Fumazone. (*Id.*, p. 11.) The plaintiff has presented evidence that Maritrop shipped nematicide from the port of Gulfport during the years 1984-93, (*Id.*, Exh. 1 to Exh. E.)

The allegations in the complaint contend that defendants were negligent in "shipping DBCP or DBCP-containing products to plaintiff's country or residence from ports in the United States including Gulfport, Mississippi when the defendants knew or reasonably should have known that the plaintiff would use the shipments of DBCP and that such use was substantially certain to cause the injuries of which plaintiff now complains." (Compl., p. 12.) In addition, the plaintiff contends that the defendants were negligent in failing to adequately warn the plaintiff and the public about the dangerous characteristics of DBCP and the hazards of exposure to the chemical. (*Id.*) Plaintiff also asserts that the defendants failed to provide information regarding safe

clothing and protective equipment and appliances for handling the material and did not place adequate warnings in plaintiff's native language on the material or disseminate or enforce a safety plan concerning handling of the material. (*Id.*) Further allegations include a failure to instruct the plaintiff concerning protective clothing and equipment; failure to implement proper application methods; failure to substitute a material for DBCP; failure to reveal results of tests to plaintiff; government agencies and/or the public; and failure to monitor the plaintiff or co-workers health. (*Id.*, pp. 12-13.)

The evidence presented by the plaintiff may establish that Chiquita International is the parent company for both Maritrop and Chiquita Brands. (Pl.'s Resp., Exh. C, p. 2.) There appears to be information that Chiquita Brands does not have its own legal department, benefit plan, human resources department, and no separate data processing function. (*Id.*, Exh. B, pp. 60-62.) Plaintiff has submitted evidence that Chiquita International administers benefit plans for tropical workers in Guatemala, Honduras, and Costa Rica, but does not include tropical field workers. (*Id.*, pp. 42-3.)

If a nonresident defendant moves for dismissal because of lack of personal jurisdiction, plaintiff bears the burden of establishing personal jurisdiction over a defendant. *Jones v. Petty-Ray Geophysical, Inc.*, 954 F.2d 1061, 1067 (5th Cir.), *cert. denied* 506 U.S. 867 (1994); *Doddy v. Oxy USA, Inc., 101* F.3d 448, 460 (5th Cir. 1996). Any material conflicts between the facts as established by the parties must be resolved in plaintiff's favor. *Jones,* 954 .2d at 1067.

For purposes of diversity jurisdiction, a corporation is deemed to be a citizen of both the state of its incorporation, and the state of its principal place of business. 28 U.S.C. §§ 1332(a), 1332(c). The "total activity" of a corporation is examined to determine its principal place of business. *Anniston Soil Pipe Co. v. Central Foundry Co.*, 329 F.2d 313 (5th Cir. 1964). For corporations with business activities in numerous states, determining its principal place of business focuses on the "nerve

center" of the corporation, where all of its business is overseen by its directors and officers. *J.A. Olson Co. v. City of Winona, Miss.*, 818 F.2d 401, 07 (5th Cir. 1987) (citing *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862, 865 (S.D.N.Y. 1959)). A court must also examine a corporation's place of activity, including the situs of its principal operations, if any, or a consideration of the location of its single activity, if applicable. *Olson*, 818 F.2d at 409.

A parent corporation like Chiquita International is not subject to the jurisdiction of a forum state simply because its subsidiary is present or doing business in that state. *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1159 (5th Cir. 1983). If the parent and the subsidiary maintain separate and distinct corporate entities, the presence of one in the forum may not be attributed to the other. *See Gundle Lining Constr. v. Adams County Asphalt*, 85 F.3d 201, 208-9 (5th Cir. 1996); *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335 (1925). Even complete stock ownership and common officers and directors are not sufficient to attribute the contacts of one entity to the other. *Cannon*, 267 U.S. at 335-37; *Dalton v. R. & W Marine, Inc.*, 897 F.2d 1359, 1363 (5th Cir. 1990). There must be proof that the parent controls the internal business operations and affairs of the subsidiary. *Hargrave*, 710 F.2d at 1160. The parent company may have complete authority over general policy decisions, so long as day-to-day business decisions are not made by the parent. *See Southmark Corp. v. Life Investors, Inc.*, 851 F.2d 763, 773 (5th Cir. 1988). Several other factors which the Court should consider include whether there are common officers and directors; whether corporations have common business departments; whether separate books and accounts are maintained; whether there is common stock ownership; the extent to which contracts between the parent and subsidiary favor one over the other; the connection of the parent's employee, officer or director to the subsidiary's tort giving rise to the suit; whether the daily operations of the two corporations are separate; whether there are formal barriers between management of the

two entities; and whether there are distinct and adequately capitalized financial units incorporated and maintained. *United States v. Jon-T Chems., Inc.,* 768 F.2d 686, 691-2 (5th Cir. 1985), *cert. denied* 475 U.S. 1014 (1986). The Court finds that the plaintiff has presented enough evidence to establish the necessary level of control by Chiquita International to subject it to personal jurisdiction based on the activities of its subsidiaries.

Additionally, the plaintiff has brought forth allegations that a portion of the tort, which culminated in plaintiff's injuries, happened as a result of Chiquita International's activities and presence in Mississippi. *Sorrells v. R & R Custom Coach Works, Inc.,* 636 So.2d 668, 672 (Miss. 1994). The Court finds that this is sufficient to satisfy the tort prong of the Mississippi Long Arm Statute.

The Court finds that the Chiquita defendants have established "minimum contacts" in Mississippi. In order to satisfy the due process test for exercising personal jurisdiction over a nonresident defendant, the federal court must conclude, first, that the defendant has purposefully established "minimum contacts" with the forum state and, if so, that the court's entertainment of the suit against the nonresident would not offend "traditional notions of fair play and substantial justice." *Bullion v. Gillespie,* 895 F.2d 213, 216 (5th Cir. 1990), *citing Asahi Metal Indus. v. Superior Ct.,* 480 U.S. 102, 105 (1987) *(quoting International Shoe Co. v. Washington,* 326 U.S. ,10, 316 (1945), and *Milliken v. Meyer,* 311 U.S. 457,463 (1940)); *Burger King Corp. v.Rudzewicz,* 471 U.S. 462, 476 (1985). The Court recognizes that it must still decline to exercise jurisdiction over the defendant if prosecution of the action in the forum state would be unreasonable or unfair. *Asahi,* 480 U.S. at 121-22. In this case, the Court finds that it would not be unreasonable or unfair to exercise jurisdiction over the remaining Chiquita defendants in Mississippi. The Court, therefore, concludes that Chiquita International's motion to dismiss for lack of personal jurisdiction should be denied.

b. Chiquita Brands

Chiquita Brands also contends that it is not subject to personal jurisdiction in Mississippi. (Chiquita Brand's Mot. to Dismiss, p. 1.) Plaintiff contends that Chiquita Brands maintains a listing for the registered agent of Chiquita Brands. (Pl.'s Resp., Exh. A.) Mere designation of a corporate agent for service of process does not satisfy the due process requirement for the exercise of general jurisdiction over a party. *Wenche Siemer v. Leaijet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992), *cert. denied* 506 U.S. 1080 (1993). Plaintiff asserts that if Chiquita Brands intended to withdraw from doing business in Mississippi, the company must comply with statutory authority as provided in Mississippi Code Annotated § 79-4-15.20(c). (Pl.'s Resp., p. 12.)

Chiquita Brands is responsible for shipping and sourcing decisions, marketing, selling and distribution of bananas. (Pl.'s Resp., Exh. B, p. 126.) The Court finds that based on the information presented regarding Chiquita Brands' presence in Mississippi as a marketing and distribution source for bananas, there are no grounds for assertion of jurisdiction over Chiquita Brands in Mississippi. *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 376 (5th Cir. 1987). Even though the plaintiff has presented evidence that DBCP was shipped from Mississippi by Maritrop, there is no evidence connecting Chiquita Brands with this activity. Accordingly, the Court finds that Chiquita Brand's motion to dismiss for lack of personal jurisdiction should be granted.

iii. Dole Defendants

a. Dole Food

Dole Food moves to dismiss for lack of personal jurisdiction. Dole Food is a Hawaii corporation. (Dole Food's Mot. to Dismiss, Exh A, ¶ 3.) Dole has a certificate of authority to transact business in Mississippi. Plaintiff argues that this is

sufficient to confer jurisdiction over Dole Food, (Pl.'s Resp. to Dole Food's Mot. to Dismiss, p. 3.) while Dole Food contends this is not enough without continuous and systematic contacts with the forum state. *Wenche Siemer,* 966 F.2d at 183. Dole Food is not incorporated in Mississippi and does not maintain a place of business within the state, has no real or personal property, has no employees, and no bank accounts in the state. (Dole Food's Mot. to Dismiss, Exh A, ¶¶ 6-9.)
Dole Food asserts that its actual sales of packaged foods in this, State are, at most, only .27% of Dole Food's total sales; the products are sold through an independent sales broker; and only nationwide advertising is directed at Mississippi. (*Id.*, 114, 5, 8, 10.)

Plaintiff contends that Dole Food is subject to personal jurisdiction in Mississippi because Dole Food supposedly transported DBCP through a Mississippi port, or committed a tort in Mississippi. (Pl.'s Resp., p. 2.) Plaintiff asserts that "millions of pounds" of DBCP were imported into the United States and the "bulk" of DBCP used by Dole Food was exported from Gulfport. (*Id.*)

Plaintiff contends that Dole Food's business contacts with the state satisfy jurisdictional requirements. Plaintiff further maintains that Dole Food is the alter ego of Dole Fruit, Standard Fruit and/or Standard Steamship. The plaintiff has submitted information which indicates that Standard Fruit is a subsidiary of Dole Food. (Pl'.s Resp., Exh. C., Domestic Family Scan, p. 2.) Plaintiff has submitted corporate information concerning Dole Food in which a Dun & Bradstreet's "Business Records Plus" report states that the company "owns and operates banana plantations in Costa Rica, Colombia and Honduras; and has several growing arrangements in Ecuador, Panama, and Nicaragua." (Pl'.s Resp., Exh. C., p. 5.) Based on this information, the Court concludes that Dole Food could have possibly employed this plaintiff in Panama and that it should not be dismissed.

b. **Dole Fruit**

Dole Fruit is a Nevada corporation. (Dole Fruit's Mot. to Dismiss, Exh A, ¶ 3.) It has neither a certificate of authority to do business, nor a registered agent for service of process, in Mississippi. (*Id.*, ¶ 4.) Plaintiff contends, however, that Dole Fruit is subject to jurisdiction based on alter ego allegations of other defendants. (Compl. ¶ 2.) Plaintiff contends that based on the information that Standard Steamship operated a pier at Gulfport from 1990 through 1994, Dole Fruit is subject to this Court's jurisdiction. (Pl.'s Resp., p. 2.) P laintiff has supplied a myriad of invoices in which Standard Steamship and Castle & Cooke purchased Nemagon which was directed from Gulfport to Costa Rica, Honduras and the Philippines. (*Id.*, Exh. A.) Plaintiff also contends that Castle & Cooke is a predecessor in interest to Dole Food. (Pl.'s Resp., p. 3.) The plaintiff maintains that although different "members of the Dole family" handled shipments of DBCP through Gulfport, the entities were acting as one, and were all managed by Castle & Cooke, the parent corporation. (*Id.*) Plaintiff also asserts that Dole Food operates a trucking facility in Mississippi. (Pl.'s Resp., p. 20; Exh. C., Business Information Report, p. 3.) Plaintiff contends that Standard Steamship passed control of the Gulfport facility to Dole Fruit in 1990. (Pl.'s Resp., p. 18; Exh. D, pp. 66-68.)

Plaintiff contends that there is evidence that the Dole defendants sourced bananas from Panama and Guatemala. (Am. Compl., Exhs. A-C.) Additionaliy, the plaintiffs assert that these defendants maintained offices in Guatemala and insured property in both Guatemala and Panama. (*Id.*, Exhs. G-L) Plaintiff has submitted evidence that DBCP was purchased in the United States for ultimate use in Panama by Castle & Cooke. (*Id.*, Exhs. K & M.) Plaintiff presented evidence through the testimony of Waldo Bernal, a Dole materials manager and purchaser, that the Dole defendants provided assistance to associated banana producers in the use certain agricultural chemicals, including DBCP. (*Id.*, Exh. E, pp. 181-85.) Plaintiff also asserts that there

is evidence that the Dole defendants required associated banana producers to follow the Dole defendant's agricultural practices. [(*Id.*, Exhs. A-F.)

There is ample evidence before the Court to confer jurisdiction over Standard Steamship, based on the evidence which establishes that Standard Steamship maintained a pier at Gulfport. The plaintiff has also presented invoices sent to Castle & Cooke that list Standard Fruit as the recipient of shipments of Fumazone from Dow destined for Costa Rico and Honduras, along with similar invoices from Shell for Nemagon with unnamed destinations. (Pl.'s Resp., Exh. A.) In addition, plaintiff has presented evidence that Plaintiff Dole Food operates a trucking facility in Mississippi, and that Standard Steamship passed control of the Gulfport facility to Dole Fruit in 1990. (Pl.'s Resp., pp. 18, 20; Exhs. C & D, pp. 66-68.)

Standard Fruit provided direction and consultation in the growing of bananas in Latin America. (Pl.'s Resp., Exh. A, Schumacher Depo., p. 15.) Shipments of nemacide were made to Standard Fruit in care of Standard Steamship at the Gulfport pier. (Pl.'s Supp. Resp. to Diversity Issue, Exh. B.) Plaintiff also contends that Standard Fruit is the alter ego of all Dole defendants. (*Id.*, pp. 9-10.)

There are several factors to be considered in reaching a determination that a subsidiary is the alter ego of the parent, which include the following:

(1) the parent and the subsidiary have common stock ownership;

(2) the parent and the subsidiary have common directors or officers;

(3) the parent and the subsidiary have common business departments;

(4) the parent and the subsidiary file consolidated financial and tax returns;

(5) the parent finances the subsidiary;

(6) the parent caused the incorporation of the subsidiary;

(7) the subsidiary operates with grossly inadequate capital;

(8) the parent pays the salaries and other expenses of the subsidiary;

(9) the subsidiary receives no business except that given to it by the parent;

(10) the parent uses the subsidiaries property as its own;

(11) the daily operations of the two corporations are not kept separate; and

(12) the subsidiary does not observe the basic corporate formalities, such as keeping separate books and records and holding shareholder and board meetings.

Gundle Lining, 85 F.3d at 208-9.

The Court finds that the information provided by the plaintiff supplies enough to confer jurisdiction over Dole Fruit and Standard Steamship. Standard Fruit, on the other hand, cannot be imputed with residency to allow the exercise of personal jurisdiction over it in this forum based on the activities of its parent corporation or another subsidiary of that parent. *See ,McCardle v. Arkansas Log Home, Inc.,* 633 F. Supp. 897 (S.D. Miss. 1986); *Gundle Lining,* 85 F.3d at 209.

A court must ensure that due process principals are satisfied when exercising personal jurisdiction over a nonresident defendant. Two requirements must be met. First, the nonresident defendant must have "purposely availed himself of the benefits and protections of the forum state by establishing 'minimum contacts' with that forum state." *Wilson,* 20 F.3d at 47. The exercise of jurisdiction over the nonresident defendant must not "offend traditional notions of fair play and substantial justice." *Id.* The Court finds that maintaining this action against the defendants in Mississippi would not offend the traditional notions of "fair play and substantial justice." *International Shoe,* 326 U.S. at 3 16. The plaintiff has established that Dole Food and Standard Steamship have the requisite "minimum contacts" to justify jurisdiction over them in this state. *Wilson,* 20 F.3d at 647.'

Second, to exercise general personal jurisdiction over a nonresident defendant, the defendant's contacts with the forum state must be both "continuous and systematic" and "substantial". *Helicopteros,* 466 U.S. at 417-19. Plaintiff's claim presents specific evidence concerning their contacts with Mississippi. The Court finds that the plaintiff has satisfied this

requirement with regards to Dole Fruit and Standard Steamship. The Court further finds that Standard Fruit, however, would be entitled to dismissal based on lack of personal jurisdiction.

IV. *Forum Non Conveniens*

The defendants Dole Food, Dole Fruit, Standard Fruit, Standard Steamship, Del Monte, Shell, Dow, Occidental, Chiquita International, and Chiquita Brands [collectively, defendants] contend that the Court should dismiss this suit under the doctrine of *forum non conveniens* because all of the wrongful acts occurred outside the country. In addition, the defendants request that the Court enjoin the plaintiff from continuing to file, or from intervening in, any other lawsuit in the United States related to exposure to DBCP. (Defs.' *Forum Non Conveniens* Mot., p. 1.) The doctrine of *forum non conveniens* involves the consideration of the private interest of the litigant together with the "relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility- of a view of the premises, and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

Defendants argue that the plaintiff is a citizen of Panama, that the exposure to DBCP happened in that country, and most witnesses and evidence are located there. (Defs.' *Forum Non Conveniens* Mot., p. 2; Exh. F, ¶¶ 6-7.) R. Burton Ballanfant, an attorney for Shell who has represented Shell in DBCP litigation involving foreign litigants since 1983, states that documents concerning the plaintiff's employment history, information concerning use of the chemical on banana farms, and documents which relate to warnings and safety equipment, if any, provided to him are also located in Panama. (*Id.*, ¶¶ 6-12.)

The plaintiff contends that dismissal under the doctrine of *forum non conveniens* is improper for several reasons. First, plaintiff contends that a voluntary submission to the jurisdiction of the country would be ineffective. (Pl.'s Resp., p. 3.) The plaintiff asserts that it would be economically impossible for him to hire an attorney to represent him in his native country, that discovery would be curtailed, and that delays would be tremendous. (*Id.*, p. 4.)

A foreign plaintiffs choice of forum, like the one involved in this case, is not entitled to the same regard or presumption of correctness as would be applied where a plaintiff sues in his home forum. *Piper Aircraft v. Reyno,* 454 U.S. 235, 256 (198 1); *Torres v. Southern Peru Copper Corp.*, 965 F. Supp. 899, 905 (S.D. Tex. 1996), *aff'd* 113 F.3d 540 (5th Cir. 1997). A court, in considering a motion to dismiss based on *forum non conveniens* should evaluate all relevant public and private interest factors which pertain to the convenience of the forums. *Piper*, 454 U.S. at 254. In weighing the factors, the court can consider any concessions made by the moving party, such as waiving statute of limitations, objections to process, personal jurisdiction or any other relevant factors. *Id.* at 257 n.25.

The Court must first determine whether an alternative forum exists. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 835 (5th Cir. 1993), *cert. denied*, 508 U.S. 973. An alternative forum will be available when the entire case and all parties can come within the jurisdiction of the other forum. *Syndicate 420 at Lloyd's of London v. Early Am. Ins. Co.,* 796 .2d 821, 830 (5th Cir. 1986). The moving defendant must establish that an adequate and available forum exists for all defendants. In re *Air Crash Disaster Near New Orleans,* 821 F.2d 1147, 1164 (5th Cir. 1987), *vacated & remanded on other grounds sub nom., Pan Am. World Airways v. Lopez,* 490 U.S. 1032 (1989).

In evaluating the private interests the court should consider the relative ease of access to sources of proof, the availability of compulsory process, the cost of obtaining attendance of willing witnesses, the enforceability of a judgment if one is obtained, and practical considerations concerning the administration of the trial. The defendant has provided the affidavit of Panamanian law expert Dr. Jorge Fabrega which shows that Panama provides its citizens the right to pursue a cause of action against the manufacturer or supplier of defective products, an employee may pursue a claim against his employer for injuries sustained while employed, a negligence claim is recognized in the country, and citizens have appeal, consolidation and discovery procedures. (Def.'s *Forum Non Conveniens* Mot., Exh. K.) Based on this information, the Court concludes that the plaintiff would not be treated unfairly or deprived of all remedies by a suit in Panama. *See Delgado v. Shell Oil Co.*, 890 F. Supp. 1324, 1361 (S.D. Tex. *1995); Simcox v. McDermott Int'l, Inc., 152* F.R.D. *689, 694* (S.D. Tex. 1994).

The Court recognizes that the majority of the relevant proof is located in Panama, along with almost all of the witnesses, including diagnosing and treating physicians, employers and family members, not to mention the plaintiff himself. Most of these witnesses would not be subject to the compulsory process of this Court, yet would be subject to such in Panama. (*Id.*, Ballanfant Aff., ¶ ¶ 8-9.) Interpreters would likely prove indispensable in this case if tried in this forum. (*Id.*, ¶ 10.) Owners and operators of independent farms are not subject to this Court's jurisdiction and cannot be joined here. (*Id.*, 18.) These factors tip the scales toward dismissal. *Piper Aircraft*, 454 U.S. at *259.* The private interest gravitates toward dismissal as the bulk of the evidence is out of the country and more readily accessible there. *Baumgart,*

981 F. 2d at 837; *see Sibaja v. Dow Chem. Co.*, 757 F. 2d 1215, 1217 (11 th Cir. 1985), *reh'g denied* 765 F.2d 154 & *cert. denied* 474 U.S. 948. Mississippi has no significant interest in these cases, and the suits would impose a burden on the Court, the defendants, and the public at large, due to the enormous amount of time that would be required to culminate this case. *See Delgado,* 890 F. Supp. at 1368 n. 111; *Ciba-Geigy Ltd. v. Fish Peddler, Inc.,* 691 So.2d 111 (Fla. App. 4 Dist. 1997), review *denied* September 10, 1997.

The persistence in the filing of such suits alarms the Court. Federal Courts can enjoin plaintiffs, such as these, from "abuse" of the court system by enjoining the commencement of further suits in the United States. *Villar,* 990 F.2d at 1499, *cert. denied* 114 S.Ct. 690 (1994). Therefore, the Court concludes that this suit should be dismissed under *forum non conveniens.* In addition, the Court will condition this dismissal on formal agreement by all defendants to submit to the jurisdiction of Panamanian courts and waive any applicable statute of limitations defenses. *Perez & Compania (Cataluna), S.A. v. M/V-MEXICO I,* 826 F. 2d 1449, 1453 (5th Cir. 1987).

Conclusion

For the reasons set forth above, this Court finds that the defendant Standard Fruit's [29-1,146-1] motion to dismiss in this case should be granted. The Court further finds that the motions of the defendants, Del Monte [144-1] and Chiquita Brands [56-1], to dismiss for lack of personal jurisdiction should be granted. Also, the Court finds the motions of the defendants, Chiquita International [55-1], Dole Food [27-1, 144-1], Dole Fruit [28-1] and Standard Steamship [26-1] to dismiss for lack of personal jurisdiction, should be denied.

The Court further finds that Del Monte's motion to dismiss for *forum non conveniens* [103-1] should be granted, and that Del Monte's motion to enjoin future litigation [103-2] should be granted. Finally, the plaintiffs motion to remand [21-1] will be denied. A separate judgment in conformity with and incorporating by reference the foregoing Memorandum Opinion shall issue. Each party shall bear their respective costs.

DATED, this the 24th day of November, A.D., 1997.

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UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

VALENTIN VALDEZ-C
PLAINTIFF

VS. CIVIL ACTION NO. 1:96cv362GR

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor-in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

FINAL JUDGMENT

This cause is before the Court on motions of the defendant, Del Monte Fresh Produce N.A., Inc. [Del Monte] to dismiss for lack of personal jurisdiction [25-1, 144-1], or in the alternative for defective service of process. Also before the Court are the motions of the defendants, Chiquita Brands International, Inc.

[Chiquita International] [55-1], Chiquita Brands, Inc. [Chiquita Brands] [56-1], Dole Food Company, Inc. [Dole Food] [27-1, 134-1], Dole Fresh Fruit Company [Dole Fruit] [28-1], Standard Fruit and Steamship Company, [Standard Steamship] [26-1] and Standard Fruit Company [Standard Fruit 29-1, 146-1] to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The plaintiff has filed a motion to remand [21-1], and a motion to clarify [133-1] a ruling entered by the Court on or about May 20, 1997, regarding service of process on Coahoma Chemical, Inc. Defendants have filed a motion to reconsider [135-1] the same order. Finally, Del Monte has filed a motion to dismiss for *forum non conveniens* [103-1], and to enjoin future litigation [103-2] by this plaintiff. Pursuant to the Memorandum Opinion entered in this cause, this date, incorporated herein by reference, it is hereby,

ORDERED AND ADJUDGED that the defendant Standard Fruit's [29-1, 146-1] motions to dismiss, be, and are hereby, granted. It is further,

ORDERED AND ADJUDGED that the defendants Del Monte [25-1, 144-1] and Chiquita Brand's [56-1] motions to dismiss for lack of personal jurisdiction, be, and are hereby, granted. It is further,

ORDERED AND ADJUDGED that the defendants Chiquita International [55-1], Dole Food [27-1, 134-1], Dole Fruit [28-1], and Standard Steamship's [26-1] motions to dismiss for lack of personal jurisdiction, be, and are hereby, denied. It is further,

ORDERED AND ADJUDGED that the defendant Del Monte's motion to dismiss under the *forum non conveniens* doctrine [103-1] be, and is hereby, granted. It is further,

ORDERED AND ADJUDGED that the defendant's Del Monte's motion to enjoin future litigation [103-2] be, and is hereby, granted. It is further,

ORDERED AND ADJUDGED that the plaintiff's motion to remand [21-1] be, and is hereby, denied.

SO ORDERED AND ADJUDGED this the 24th day of

November, A.D., 1997.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

EDGAR ARROYO-GONZALEZ
PLAINTIFF

vs. CIVIL ACTION NO. 1:96-cv-358(Br)(R)

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This cause is before the Court on motions of defendants Del Monte Fresh Produce N.A., Inc. ("Del Monte") **[docket entry no. 22]**; Chiquita Brands International, Inc. ("Chiquita

International" **[docket entry no. 49]** and Chiquita Brands, Inc. ("Chiquita Brands") **[docket entry no. 50]** to dismiss for lack of personal jurisdiction, pursuant to Rule 12 (b) (2) of the Federal Rules of Civil Procedure. The plaintiff has filed motions to remand **[docket entries no. 18, 120]**, and a motion to clarify **[docket entry no. 136]** a ruling made May 20, 1997, regarding service of process on Coahoma Chemical, Inc. ("Coahoma III'). The defendants have filed a motion to reconsider **[docket entry no. 135]** the same order. Finally, the defendants have filed a motion to dismiss for forum non conveniens **[docket entry no. 96]**, and to enjoin future litigation by this plaintiff. After due consideration of the briefs of counsel, the applicable law, and being otherwise fully advised in the premises, the Court finds as follows:

Arroyo-Gonzalez is a citizen of Costa Rica. (Complaint, ¶ 1). According to the allegations of the complaint, Arroyo-Gonzalez was exposed to the manufacturer defendants, dibromochloropropane ("DBCP") products while working in banana fields in Costa Rica between 1959-1990. Id., ¶ 5). Arroyo-Gonzalez asserts that he was employed by one or more of the defendants named in the complaint. (Id., ¶ 6)

The Court has considered the issues of law in the opinion filed in Valdez-C v. Coahoma Chem., Inc., 1:96-cv-362(G)(R). The findings of U.S. District Judge Walter J. Gex, III, in said opinion are adopted and incorporated by reference into this opinion. The motion to dismiss based on the doctrine of forum non conveniens will be separately addressed, as the appropriate forum for ArroyoGonzalez is different than the forum addressed in the aforementioned opinion.

The defendants Dole Food, Dole Fruit, Standard Fruit, Standard Steamship, Del Monte, Shell, Dow, Occidental, Chiquita International, and Chiquita Brands (collectively, "the defendants") contend that the Court should dismiss this suit under the doctrine of forum non conveniens because all of the wrongful acts occurred outside the United States. In addition, the defendants request that the Court enjoin the plaintiff from

continuing to file, or from intervening in, any other lawsuit in the United States related to exposure to DBCP. (Defendants' Forum Non Conveniens Motion, p. I). The doctrine of forum non conveniens involves the consideration of the private interests of the litigant together with the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, ... and all other practical problems that make trial of a case easy, expeditious and inexpensive." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947).

The defendants argue that the plaintiff is a citizen of Costa Rica, that the exposure to DBCP happened in that country, and most of the witnesses and evidence are located there. (Defendants, Forum Non Conveniens Motion, p. 2; Affidavit of R. Burton Ballanfant (Exh. F), ¶¶ 6-7). R. Burton Ballanfant, an attorney for Shell who has represented Shell in DBCP litigation involving foreign litigants since 1983, states that documents concerning the plaintiff's employment history, information concerning use of the chemical on banana farms, and documents which relate to warnings and safety equipment, if any, provided to him are also located in Costa Rica. (Id., ¶¶ 6-12).

The plaintiff contends that dismissal under the doctrine of forum non conveniens is inappropriate for several reasons. First, the plaintiff contends that a voluntary submission to the jurisdiction of Costa Rica would be ineffective. (Plaintiff's Response 3). The plaintiff asserts that it would be economically impossible for him to hire an attorney to represent him in his native country, that discovery would be curtailed, and that delays would be tremendous. (Id., p. 4).

A foreign plaintiff's choice of forum, like the one involved in this case, is not entitled to the same regard or presumption of correctness as would be applied where a plaintiff sues in his home forum. Piper Aircraft v. Reyno, 454 U.S. 235, 256 (1981); Torres v. Southern Peru Copper Corp., 965 F. Supp. 899, 905 (S.D. Tex. 1996). A court, in considering a motion to dismiss

based on forum non conveniens, should evaluate all relevant public and private interest factors which pertain to the convenience of the forums. Piper Aircraft, 454 U.S. at 254. In weighing the factors, the court can consider any concessions made by the moving party, such as waiving statutes of limitations, objections to process, and personal jurisdiction, as well as any other relevant factors. Id. at 257 n.25.

The Court must first determine whether an alternative forum exists. Baumgart v. Fairchild Aircraft Corp., 981 F.2d 824, 835 (5th Cir. 1993). An alternative forum will be available when the entire case and all parties can come within the jurisdiction of the other forum. Syndicate 420 at Lloyd's of London v. Early Am. Ins. Co., 796 F.2d 821, 830 (5th Cir. 1986). The moving defendant must establish that an adequate and available forum exists for all defendants. In re Air Crash Disaster Near New Orleans, 821 F.2d 1147, 1164 (5th Cir. 1987), vacated & remanded on other grounds sub nom., Pan Am. World Airways v. Lopez, 490 U.S. 1032 (1989).

In evaluating the private interests the court should consider the relative ease of access to sources of proof, the availability of compulsory process, the cost of obtaining attendance of willing witnesses, the enforceability of a judgment if one is obtained, and practical considerations concerning the administration of the trial. The defendant has provided the affidavit of Costa Rican law expert Miguel Blanco Quiros which shows, inter alia: Costa Rica provides its citizens the right to pursue a cause of action against the manufacturer or supplier of defective products; an employee may pursue a claim against his employer for injuries sustained while employed; a negligence claim is recognized in the country; and the Costa Rican courts have appellate,, consolidation and discovery procedures. (Defendants' Forum Non Conveniens Motion, Affidavit of Miguel Blanco Quiros (Exh. K)).

The plaintiff contends that the public and private interest factors weigh against dismissal because (1) differences in the discovery rules make it more convenient for all parties to litigate

in the United States, and (2) concerns about compulsory process and the ability to implead third-party witnesses require trial in the United States. (Plaintiff's Response, pp. 19-21; Affidavit of Alejandro Rodriguez Vega (Exh. E)). Similar arguments were considered by the United States District Court for the Southern District of Texas in Delgado v. Shell Oil, 890 F. Supp. 1324, 1361 (S.D. Tex. 1995), also a DBCP case. The court ruled that dismissal on forum non conveniens grounds was warranted as to all plaintiffs, including those from Costa Rica. Id. at 1365, 1372. The availability of the Costa Rican forum has also been confirmed in Sibala v. Dow Chemical Co., 757 F.2d 1215, 1217-18 (11th Cir.), cert. denied, 474 U.S. 948 (1985); Aquilar v. Dow Chemical Co., No; 86-4753, slip op. (C.D. Cal. Dec. 23, 1986) ; Barrantes Cabalceta v. Standard Fruit Co., 667 F. Supp. 833 (S.D. Fla. 1987), aff'd in relevant part, 883 F.2d 1553 (11th Cir. 1989) ; and Rolas v. DeMent, 137 F.R.D. 30, 33 (S.D. Fla. 1991), vacated on other grounds, Case No. 91-8185 (S.D. Fla. Feb. 25, 1992).

Based on all the information furnished in this case, the Court concludes that the plaintiff would not be treated unfairly or deprived of all remedies by a suit in Costa Rica. See Simcox v. McDermott Int'l, Inc., 152 F.R.D. 689, 694 (S.D. Tex. 1994). The Court recognizes that the majority of the relevant proof is located in Costa Rica, along with almost all of the witnesses, including diagnosing and treating physicians, employers and family members, not to mention the plaintiff himself. Most of these witnesses would not be subject to the compulsory process of this Court, yet would be subject to such in Costa Rica. (Id., Ballanfant Affidavit, ¶¶ 8-9). Interpreters would likely. prove indispensable if the case were tried in this country. (Id., ¶ 10). owners and operators of independent farms are not subject to this Court's jurisdiction and cannot be joined here. (Id., ¶ 8; Piper Aircraft, 454 U.S. at 259) . The private interests gravitate toward dismissal as the bulk of the evidence is out of this country and more readily accessible to Costa Rica. Baumgart, 981 F.2d at 837; see also Sibala, 757 F.2d at 1217. Mississippi has no

significant interest in these cases, and the suits would impose a burden on this Court, the defendants and the public at large, due to the enormous amount of time that would be required to litigate this and similar cases, See Delgado, 890 F. Supp. at 1368 n.111; Ciba-Geigy Ltd. v. Fish Peddler, Inc., 691 So.2d 1111 (Fla. App. 4 Dist. 1997).

The persistence in the filing of similar suits by this plaintiff and others before this Court concerns the Court. Federal Courts can enjoin plaintiffs, such as these, from "abuse" of the court system by enjoining the commencement of further suits in the United States. Villar v. Crowley Maritime Corp., 990 F.2d 1489, 1499 (5th Cir. 1993). This was the conclusion reached in Delgado v. Shell Oil Co., No. 94-1337 (S.D. Tex. Oct. 27, 1995), and also by this Court in Valdez-C v. Coahoma Chem. , Inc., 1: 96-cv-362 (G) (R) (S.D. Miss. Nov. 25, 1997) and Belteton-Rivera v. Coahoma Chem., Inc., 1:96-cv-359(G)(R) (S.D. Miss. Nov. 25, 1997) (final judgments granting permanent injunction). The same relief is warranted in this case.

The Court finds that this suit should be dismissed under forum non conveniens, and the plaintiff enjoined from. the commencement of similar suits in the United States. In addition, dismissal is conditioned on formal agreement by all defendants to submit to the jurisdiction of Costa Rican courts and waive any applicable statute of limitations defenses. Perez & Compania (Cataluna), S.A. v. M/MEXICO I, 826 F.2d 1449, 1453 (5th Cir. 1987). Accordingly,

IT IS HEREBY ORDERED that the findings of U.S. District Judge Walter J. Gex, III, in the opinion filed November 25, 1997, in Valdez-C v. Coahoma Chem., Inc., 1:96-cv-362(G)(R), are adopted and incorporated by reference herein;

FURTHER ORDERED that the plaintiff's motion to clarify **[docket entry no. 136]** is GRANTED, and the defendants' motion to reconsider **[docket entry no. 135]** is DENIED;

FURTHER ORDERED that the plaintiff's motions to remand **[docket entries no. 18, 120]** are DENIED;

FURTHER ORDERED that the motions of defendants Del

Monte Fresh Produce N.A., Inc. **[docket entry no. 22],** and Chiquita Brands, Inc. **[docket entry no. 50],** to dismiss for lack of personal jurisdiction, pursuant to Rule 12 (b) (2) of the Federal Rules of Civil Procedure, are GRANTED.

FURTHER ORDERED that the motion of Chiquita Brands International, Inc. **[docket entry no. 49],** to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b) (2) of the Federal Rules of Civil Procedure, is DENIED.

FURTHER ORDERED that the defendants, motions to dismiss for forum non conveniens **[docket entry no. 96],** and to enjoin future litigation by this plaintiff **[docket entry no. 96]** are GRANTED. A final judgment shall be entered of even date herewith, with all parties to bear their own costs.

SO ORDERED, this the ___ day of December, 1997.

_____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

EDGAR ARROYO-GONZALEZ
PLAINTIFF

VS. CIVIL ACTION NO. 1:96-cv-358(Br)(R)

COAHOMA CHEMICAL COMPANY, INC., (Individually and as successor in-interest to COAHOMA CHEMICAL COMPANY, INC.); AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORP. (Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company); STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, N.A.

DEFENDANTS

FINAL JUDGMENT

This cause having come before the Court on motions of defendants Del Monte Fresh Produce N.A., Inc. ("Del Monte") **[docket entry no. 22]** ; Chiquita Brands International, Inc.

("Chiquita International" **[docket entry no. 49]** ; and Chiquita Brands, Inc. ("Chiquita Brands") **[docket entry no. 50]** to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure; the plaintiff motions to remand **[docket entries no. 18, 120]**, and motion to clarity **[docket entry no. 136]** a ruling made May 20, 1997; the defendants' motion to reconsider **[docket entry no. 135]** the same order; and the defendants, motion to dismiss for forum non conveniens **[docket entry no. 96]**, and to enjoin future litigation by this plaintiff. After due consideration of the foregoing, the Court has rendered a Memorandum opinion and Order of even date herewith addressing the various motions and granting the following relief:

IT IS HEREBY ORDERED that the findings of U.S. District Judge Walter J. Gex, III, in the opinion filed November 25, 1997, in Valdez-C v. Coahoma Chem., Inc. 1: 96-cv-362 (G)(R) I are adopted and incorporated by reference herein;

FURTHER ORDERED that the plaintiff's motion to clarify **[docket entry no. 136]** is GRANTED, and the defendants' motion to reconsider **[docket entry no. 135]** is DENIED;

FURTHER ORDERED that the plaintiff'S motions to remand **[docket entries no. 18, 120]** are DENIED;

FURTHER ORDERED that the motions of defendants Del Monte Fresh Produce N.A., Inc. **[docket entry no. 22]**, and Chiquita Brands, Inc. **[docket entry no. 50]**, to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, are GRANTED.

FURTHER ORDERED that the motion of Chiquita Brands International, Inc. **[docket entry no. 49]**, to dismiss for lack of personal jurisdiction, pursuant to Rule 12 (b) (2) of the Federal Rules of Civil Procedure, is DENIED.

FURTHER ORDERED that the defendants' motions to dismiss for forum non conveniens **[docket entry no. 96]**, and to enjoin future litigation by this plaintiff **[docket entry no. 96]** are GRANTED. Accordingly, IT IS HEREBY ORDERED AND ADJUDGED that this action is DISMISSED without prejudice,

under the terms of this Judgment and the Memorandum Opinion filed herein, each party to bear its own costs.

SO ORDERED AND ADJUDGED, this the ___ day of December, 1997.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

EDGAR ARROYO-GONZALEZ
PLAINTIFF

VS.

CIVIL ACTION NO. 1:96-cv-358(Br)(R)

COAHOMA CHEMICAL
COMPANY, INC., ET AL

DEFENDANTS

ORDER

This cause is before the Court on the plaintiff's "Renewed Motion to Remand" **[161-1]**. Having carefully considered the motion, the Court finds as follows:

On December 31, 1997, the Court entered its Final Judgment in this case, which, inter alia, denied the plaintiff's motion to remand. The plaintiff subsequently filed motions to alter or amend the judgment. These motions were denied by an order entered September 30, 1998. On October 2, 1998, the plaintiff filed his notice of appeal. Five days before the Court's Order denying the motions to alter or amend, the plaintiff had filed his "Renewed Motion to Remand," which the Court construes as a supplement to the motions to alter or amend. Since the issues raised in the "Renewed Motion to Remand" were also raised in the motions to alter or amend, the Court's Order of September 30, 1998, adequately addresses and denies the "Renewed Motion to Remand" by implication.

Further, in this case, the Court adopted Judge Walter J. Gex, III's Memorandum Opinion in the related cases, deciding the defendants, motion to dismiss for lack of jurisdiction before

addressing the motion to remand. See Villar v. Crowley Maritime Corp., 990, F. 2d. 1489, 1494 (5th Cir. 1993), reh'g denied 997 F.2d 883 & cert. denied 510 U.S. 1044 (1994). The Opinion further found that the Court had subject matter jurisdiction, citing Secruihua v. Texaco, Inc., 847 F. SUPP. 61 (S.D. Tex. 1994) . The motion to remand was denied on that basis. Finding nothing new in the plaintiff's motion that was not considered by the Court in reaching its earlier decision, the Court finds that the "Renewed Motion to Remand" is not well-taken. Accordingly,

IT IS HEREBY ORDERED that the plaintiff's "Renewed Motion to Remand" **[161-1]**, which the Court construes as a supplement to the motions to alter or amend, is DENIED.

SO ORDERED, this the ____ day of May, 1999.

_____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

EDGAR ARROYO-GONZALEZ,
PLAINTIFF

VS. CIVIL ACTION NO. 1:96-cv-358(Br)(R)

COAHOMA CHEMICAL
COMPANY, INC., ET AL.,

DEFENDANTS

ORDER

This cause is before the Court on the plaintiff's motions to **alter [156-1]** or amend **[157-1]** the judgment in this case under Rules 52 and 59(e) of the Federal Rules of Civil Procedure; and on the defendant Chiquita Brands, motion to strike letter brief **[160-1]**. Having carefully considered the motions, responses and memoranda, and being fully advised in the premises, the Court finds as follows:

"The Federal Rules do not recognize a motion for reconsideration in haec verba." Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F.2d 167, 173 (5th Cir. 1990). Regardless, "[i]f the motion is served within ten days of the rendition of judgment, the motion falls under Rule S9(e); if it is served after that time, it falls under Rule 60(b)." Id. The plaintiff's motion was filed within the time limits of Rule 59(e).

The plaintiff argues a variety of reasons why the ruling of this Court should be amended. The Court finds nothing new in the motion that was not considered by the Court in reaching its earlier decision.

Specific grounds for relief are not outlined under Rule

59(e), and a court has wide discretion in deciding whether to grant such a motion. Edward H. Bohlin Co. v. Banning Co., 6 F.3d 350, 355 (5th Cir. 1993). Reconsideration of a prior judgment is a rare event. Id. Grounds for granting relief to a party seeking relief under Rule 59(e) include: (1) that the judgment is based upon a manifest error of law or fact; (2) the existence of newly discovered or previously unavailable evidence; (3) reconsideration is necessary to prevent manifest injustice; and (4) serious misconduct of counsel involved justifies relief. Id.; see Waltman v. International Paper Co., 875 F.2d 468, 473 (5th Cir. 1989). None of these factors is involved in this case and no basis to alter the Court's previous ruling is present in the plaintiff's motion.

A motion filed under Rule 59 does not give an unhappy litigant an additional chance to sway the judge into ruling in favor of the movant. See Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990); Currie v. Baxter, Brown & Co., 145 F.R.D. 66, 68 (S.D. Miss. 1992); FDIC v. Cage, 810 F. Supp. 745, 747 (S.D. Miss. 1993); see also Abbott v. Equity Group, Inc., 2 F.3d 613, 629 (5th Cir. 1993). The Court finds that the plaintiff's motions should be denied. Accordingly,

IT IS HEREBY ORDERED that the plaintiff's motions to alter **[156-1]** or amend **[157-1]** the judgment in this case under Rules 52 and 59(e) of the Federal Rules of Civil Procedure are DENIED;

FURTHER ORDERED that the defendant Chiquita Brands, motion to strike letter brief **(160-1]** is DENIED AS MOOT.

SO ORDERED, this the ___ day of September, 1998.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX C

Filed March 6, 2001

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60240

CARLOS NICANOR ESPINOLA-E

Plaintiff Appellant-Cross-Appellee

v.

COAHOMA CHEMICAL COMPANY INC, Individually and as successor in Interest to Coahoma Chemical Company Inc; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as Successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products Inc, Hooker Chemical and Plastics, Occidental Company of Texas and Best Fertilizer Company; CHIQUITA BRANDS INTERNATIONAL INC; CHIQUITA BRANDS INC; DEL MONTE FRESH PRODUCE, N. A.

Defendants - Appellees

STANDARD FRUIT CO; STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT CO, INC.

Defendants - Appellees-Cross-Appellants

No. 98-60454

AMILCAR BELTETON-RIVERA

Plaintiff - Appellant-Cross-Appellee

v.

COAHOMA CHEMICAL COMPANY INC, Individually and as Successor In Interest to Coahoma Chemical Company Inc; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually And As Successor To Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc, Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company; STANDARD FRUIT COMPANY; CHIQUITA BRANDS INC; DEL MONTE FRESH PRODUCE, N.A.

Defendants - Appellees

STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT COMPANY INC; CHIQUITA BRANDS INTERNATIONAL INC.

Defendants - Appellees-Cross-Appellants

No. 98-60467

EULOGIO GARZON-LARRESTHEGUI

Plaintiff - Appellant-Cross-Appellee

v.

COAHOMA CHEMICAL COMPANY INC, Individually and as Successor-In-Interest to Coahoma Chemical Company, Incorporated; AMVAC CHEMICAL CORPORATION; SHELL

OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc, Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company; STANDARD FRUIT COMPANY; CHIQUITA BRANDS INC; DEL MONTE FRESH PRODUCE, North America

Defendants - Appellees

STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT COMPANY; CHIQUITA BRANDS INTERNATIONAL INC.

Defendants - Appellees-Cross-Appellants

No. 98-60510

VALENTIN VALDEZ-C

Plaintiff - Appellant-Cross-Appellee

V.

COAHOMA CHEMICAL COMPANY INC, individually and as successor-in-interest to Coahoma Chemical Company, Inc; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, individually and as successor to Occidental Chemical Company and Occidental Chemical and Agricultural Products, Inc, Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Company; STANDARD FRUIT COMPANY; DEL MONTE FRESH PRODUCE, N.A.

Defendants - Appellees

STANDARD FRUIT AND STEAMSHIP; DOLE FOOD COMPANY; DOLE FRESH FRUIT INTERNATIONAL; CHIQUITA BRANDS INTERNATIONAL INC.

Defendants - Appellees-Cross-Appellants

No. 98-60646

EDGAR ARROYO-GONZALEZ; ET AL

Plaintiffs

EDGAR ARROYO-GONZALEZ

Plaintiff - Appellant-Cross-Appellee

V.

COAHOMA CHEMICAL COMPANY INC, Individually and as successor in interest to Coahoma Chemical Co, Inc; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION, Individually and as successor to Occidental Chemical Co. and Occidental Chemical and Agricultural Products, Inc., Hooker Chemical and Plastics, Occidental Chemical Company of Texas and Best Fertilizer Co; STANDARD FRUIT CO.; CHIQUITA BRANDS INC; CHIQUITA BRANDS INTERNATIONAL INC; DEL MONTE FRESH PRODUCE N.A.

Defendants - Appellees

STANDARD FRUIT AND STEAMSHIP COMPANY; DOLE FOOD COMPANY INC.; DOLE FRESH FRUIT COMPANY

Defendants - Appellees-Cross-Appellants

Appeals from the United States District Court for the Southern District of Mississippi, Biloxi

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ON PETITIONS FOR REHEARING
AND REHEARING EN BANC

(Opinion 1/19/01, 5 Cir., ___ F.3d ___)

Before JOLLY and DAVIS, Circuit Judges, and RESTANI, Judge.*

PER CURIAM:

(X)The Petitions for Rehearing are DENIED and no member of this panel nor judge in regular active service on the court having

requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR.R. 35) the Petitions for Rehearing En Banc are also DENIED.

( ) The Petitions for Rehearing are DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petitions for Rehearing En Banc are also DENIED.

( ) A member of the court in active service having requested a poll on the reconsiderations of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearings En Banc are DENIED.

ENTERED FOR THE COURT:

_____

United States Circuit Judge

* Judge, U.S. Court of International Trade, sitting by designation.

Chief Judge King and Judge Jones did not participate in the consideration of the rehearings en banc.

REHG-15A

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.